No. 55104-7-II

IN THE WASHINGTON COURT OF APPEALS

DIVISION II

FREEDOM FOUNDATION,

Appellant/Plaintiff,

v.

SERVICE EMPLOYEES INTERNATIONAL UNION POLITICAL EDUCATION AND ACTION FUND,

Appellee/Defendant.

APPELLANT/PLAINTIFF, FREEDOM FOUNDATION'S, INITIAL BRIEF

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I. INTRODUCTION AND SUMMARY OF ARGUMENT.

The Service Employees International Union's Political Education and Action Fund ("SEIU PEAF") failed to disclose or timely disclose at least $2.8 million in contributions it received from out-of-state sources, thus concealing the ultimate donor of three-quarters of a million dollars it gave to Washington State political candidates. Prior to commencing the Citizen's Action below, and in compliance with the procedures required by the Fair Campaign Practices Act, ch. 42.17A, RCW (the "FCPA"), the Freedom Foundation (the "Foundation") requested that the Washington State Public Disclosure Commission (the "PDC") take enforcement action against SEIU PEAF for its ongoing and systematic violations of the FCPA,

The PDC declined to take any enforcement action, even though SEIU PEAF conceded many of these violations to the PDC, even though it had recently issued a warning to SEIU PEAF in January 2019, for similar conduct in response to a Freedom Foundation complaint that had been filed previously, and even though SEIU PEAF had only taken action to correct its "errors" after the Foundation submitted its second complaint (at issue here) to the PDC. The PDC's Executive Director cited "limited resources" in explaining its staff decision.

The injury to the residents of this State and to the Foundation's efforts that results from it being unable to communicate concealed information to public employees concerning SEIU PEAF's extensive, secret political expenditures should have been taken seriously by the PDC, but failing that, the Foundation should have the ability to bring a citizen's action, as statutory law has long provided.

The PDC's disposition of the allegation at issue here, combined with its position on a subsequent administrative petition by the Foundation, is a bid to centralize unprecedented enforcement discretion within that agency, at its earliest opportunity since the legislature significantly revised the statute in 2018 and 2019. Thurston County Superior Court, Hon. J. Skinder, dismissed a related Petition by the Foundation against SEIU PEAF and the PDC for judicial review under the Administrative Procedures Act, ch. 34.05, RCW (the "APA"), and an appeal to this Court is pending. *See Freedom Foundation v. Washington State Public Disclosure Commission and Service Employees International Union Political Education and Action Fund*, No. 53889-0-II (the "APA Appeal").[1] According to the trial court in the APA Appeal, no judicial review is available, to anyone, where the PDC declines to take enforcement action, even in cases of significant and undisputed violations of the FCPA.

Here, in a similar procedural posture, the trial court has dismissed a citizen's action under the FCPA, upon its apparent belief that the PDC's declining to take enforcement action against SEIU PEAF also precludes any action by the citizen. *See* RCW 42.17A.775(1), (2), and RCW 42.17A.755. It is immediately apparent that the trial court's dismissal runs afoul of the Washington Supreme Court's decision in *Utter v. Building Industry Association of Washington*, 182 Wn.2d 398, 341 P.3d 953 (2015) ("*Utter*"), because the trial court departed from the axiomatic understanding of the FCPA citizen's action as reflected in *Utter*. The entire reason for the

[1] The basis for the trial court's dismissal in that matter was, *inter alia*, that the Foundation was not a "party" to the administrative proceedings, for purposes of the APA, because the PDC exercised no "coercive power" over the Foundation. In other words, the Superior Court accepted the idea that no one has standing to challenge the PDC's determinations under the APA, unless they are the subject of an enforcement proceeding and some action is actually taken against them. The Foundation initiated its APA Appeal in October, 2019, which recently has been set for review without oral argument on January 5, 2021.

citizen's action is that the decision of state authorities to "decline[] to sue" to enforce the FCPA "may be wrong", leaving it "up to citizens to expose the violation." *See Utter*, 182 Wn.2d at 412.

The trial court here, however, appears to believe that the 2018 FCPA amendments so fundamentally undermined the citizen's action process that the mere act of the PDC informing the parties it will take no enforcement action is sufficient to prevent the citizen complainant from proceeding. This is an incorrect reading of the statute's plain meaning. The stakes here are increased by the fact that the citizen's action is the *only* apparent means for citizens to challenge erroneous decisions of the PDC, given that judicial review under the APA also has been held unavailable. If APA challenges are not available, and neither is a citizen's action, then the law of this State has simply cast aside *Utter's* recognition that government officials "may be wrong," as well as the foundational principles of the FCPA itself. *See Utter*, 182 Wn.2d at 412. Effectively, this "heads-we-win, tails-you-lose" strategy would mean that the PDC's non-enforcement decisions are categorically immune from challenge, even where the agency has acted arbitrarily, capriciously or, worse, discriminatorily.

Notwithstanding the PDC's claim to "discretionary authority" to enforce the mandates of the FCPA, judicial review of an agency's operations and decisions is a fundamental component of due process in the United States and in the State of Washington. *See State v. Ford*, 110 Wn. 2d 827, 829, 755 P.2d 808 (1988) (*citing Pierce County Sheriff v. Civil Service Commission of Pierce County*, 98 Wn. 2d 690, 658 P.2d 648 (1983)). Against this background, the notion that essentially all decisions of the PDC could be beyond question is repugnant.

These are matters of considerable public importance because SEIU PEAF's failure to disclose the source of $2.8 million or more in political contributions injures everyone in Washington State. Further, the PDC's "slap on the wrist" (*i.e.*, its second warning letter to SEIU PEAF in less than six months) reflects a determination to consistently exempt SEIU PEAF and other favored entities from the same campaign finance laws with which others must comply. If the results here and in the APA Appeal are carried forward, politically-favored actors may effectively be permitted to violate the FCPA with impunity. The citizens who initially passed the FCPA as a ballot initiative, in order to maximize government transparency and quell corruption, would be appalled to learn the way in which the PDC, SEIU PEAF, and the trial court interpret its subsequent revisions today.

Thankfully, however, Appellee's position is *not* the law, even after the 2018 amendments to the FCPA made significant changes to the pre-suit requirements for a citizen's action. As the statute existed at the relevant time, in 2018, the plain meaning of RCW 42.17A.775 and RCW 42.17A.755 was clear that a dismissal by the PDC was not one of the dispositions "authorized" under RCW 42.17A.755(1), and so it was not entitled to preclude a citizen's action under RCW 42.17A.775. In dismissing the administrative complaint here, the PDC categorized SEIU PEAF's transgressions as "minor violations," pursuant to one of its own administrative regulations. However, this categorization lacked any authority because, at the relevant time, the FCPA itself set forth the exclusive listing of the categories into which a violation could fall, and "minor violations" was not on the list. Accordingly, if allegations of wrongdoing did not constitute a "technical correction" or a "remedial

violation," they necessarily were to be treated as an "actual violation," which the statute did not allow the PDC to dismiss in its unfettered discretion.

As such, the PDC's rule additionally recognizing "minor violations," and its attempt to cram its dismissal into that rule, are entitled to no deference by the Court. The PDC's interpretation runs contrary to the plain language of the relevant statutory provisions, as well as to the policy goals of the FCPA, generally. The result below – which leaves the Foundation with no cognizable remedy for SEIU PEAF's numerous, unrepentant violations – should not stand.

II. ASSIGNMENT OF ERROR & ISSUES PRESENTED.

A. Assignment of Error.

The trial court, Hon. Carol Murphy, erred in dismissing the Freedom Foundation's citizen's action complaint, upon the Defendant, SEIU PEAF's, CR 12(b)(6) motion to dismiss.

B. Issues Presented.

1. Whether the trial court erred in dismissing the Foundation's citizen's action complaint, alleging "actual violations," interpreting the plain language of RCW 42.17A.755 and RCW 42.17A.775 to preclude a citizen's action, where the PDC *declines* to take any enforcement action against a political committee which admits it violated the FCPA by not disclosing the source of millions of dollars?

2. Whether the trial court erred in dismissing the Foundation's citizen's action complaint, interpreting RCW 42.17A.755 (which allows discretion for "remedial violations" or "technical corrections") to also allow discretionary dismissal for a third category, "minor violations," thus giving

the PDC the authority, in 2018, to dismiss administrative complaints alleging such violations on that basis?

3. Whether the Court should defer to the administrative interpretation of the FCPA, as set forth in WAC 390-37-060, even though that regulation preceded the recent amendments creating technical corrections and remedial violations, recognized a category of violations that was not then recognized by RCW ch. 42.17A, and even though absolute discretion to ignore FCPA violations would undermine the transparency and other policy goals of the FCPA?

III. STATEMENT OF THE CASE.

The Freedom Foundation commenced its Citizen's Action Complaint for Violations of RCW 42.17A (the "Complaint") on March 5, 2020. *See generally* CP, at 001-020.[2] The underlying factual basis is that SEIU PEAF violated the FCPA by not disclosing millions of dollars it had received, among other transgressions, and that the PDC acted unlawfully and was simply wrong in thinking it could dismiss the Freedom Foundation's administrative complaint exposing those actual violations. *See* CP, at 001-012.

In responding to the PDC's administrative review of the Foundation's allegations, SEIU PEAF admitted to the PDC it had completely failed to disclose $2.8 million in contributions as required by the FPCA. *See* CP 005 (Complaint ¶ 22). The Foundation further alleged that SEIU PEAF repeatedly violated the FCPA's disclosure requirements by failing to state its purpose on required forms C5, filing forms late, and making other errors on its PDC reports. *See id*. at 004-008.

[2] All references to the Clerk's Papers compiled for purposes of this appeal, shall appear in the form "CP, at xxx."

After considering the parties' submissions, but not holding a hearing or conducting any further investigation to speak of, the PDC determined the allegations and admissions merited only a "formal written warning" to SEIU PEAF, which was issued on May 7, 2019. CP, at 014-016. The substance of the PDC's determination, as reflected in its correspondence of that date, states: "…PDC staff has determined that the facts in this instance do not amount to a finding of an actual violation warranting further investigation. However, pursuant to WAC 390-37-060(1)(b), PDC staff will be formally warning SEIU PEAF concerning the importance of timely and accurately filing C-5 reports disclosing contribution and expenditure activities undertaken by an out-of-state political committee as required by PDC laws and rules." *Id*.

What makes this disposition exceedingly inappropriate is that SEIU PEAF had admitted many of the substantive allegations to the PDC. For instance, it admitted that on two (2) occasions, large contributions received by SEIU PEAF from SEIU's general fund should have been reported by SEIU PEAF on its C-5 filings, but were not.[3] *See* CP, at 015. SEIU PEAF attributed its failures to "an inadvertent error." *Id*. The PDC treated the SEIU PEAF's numerous, admitted failures as "minor violations," and declined to take any enforcement action beyond issuing yet another warning letter. *See* CP, at 016; *see also* CP, at 018.

As such, the Foundation wrote to the PDC, pointing out several factual and legal flaws in its resolution of the complaint and requesting that it reconsider its decision in that regard, but the PDC denied the Foundation's

[3] The PDC noted that SEIU PEAF had filed corrected forms C-5, but this activity was undertaken only *after* the Foundation's complaint had been submitted to the PDC, on the date of SEIU PEAF's response. *See* CP, at 015-016.

request on May 20, 2019. CP, at 018-020. The PDC's email declining reconsideration "clarified" that "[t]he matter was dismissed with a warning pursuant to WAC 390-37-060(1)(d). Our correspondence resolving the case inadvertently cited WAC 390-37-060(1)(b), which had contained the warning provision of that rule prior to the latest revisions, effective 12/31/2018." CP, at 018.

The Foundation then filed its Complaint (CP, at 001), and SEIU PEAF moved to dismiss the Complaint on April 30, 2020, arguing *inter alia* that the Foundation could not bring a citizen's action because the PDC's determination *not* to act precluded a citizen's action under the 2018 amendments to the FCPA. *See generally* CP, at 025-032. Judge Murphy declined to take judicial notice of various factual submissions made by the parties, apparently considering them irrelevant to arguments concerning how the trial court should interpret the plain language of RCW 42.17A.755 and RCW 42.17A.775, and granted the motion to dismiss on July 29, 2020. CP, at 112-113.

The Foundation timely filed an appeal on August 19, 2020. CP, at 108. The Foundation subsequently moved for an extension of time to submit this Initial Brief through and including December 2, 2020, which Appellee did not oppose. The motion for extension was granted on October 23, 2020, and this Initial Brief is filed in accordance with that Order.

IV. ARGUMENT.

The text of the FCPA, Section 775, states in pertinent part,

> A citizen's action may be brought and prosecuted only if the person first has filed a complaint with the commission and: … The Commission has not yet taken action authorized under RCW 42.17A.755(1) within ninety days of the complaint being filed with the commission…

RCW 42.17A.775(2)(a) (emphasis added).[4]

For its part, Section 755 states, in relevant portion, that

> (1) The commission may initiate or respond to a complaint, request a technical correction, or **otherwise** resolve matters of compliance with this chapter in accordance with the section. If a complaint is filed with or initiated by the commission, the commissioner must:
>
> (a) Dismiss the complaint or **otherwise** resolve the matter in accordance with subsection (2) of this section, as appropriate under the circumstances after conducting a preliminary review;
>
> (b) Initiate an investigation to determine whether a violation has occurred, conduct hearings, and issue and enforce an appropriate order, in accordance with chapter 34.05 RCW and subsection (3) of this section; or
>
> (c) Refer the matter to the attorney general, in accordance with subsection (4) of this section.
>
> (2)(a) For complaints of remedial violations or requests for technical corrections, the commission may, by rule, delegate authority to its executive director to resolve these matters in accordance with subsection 1(a) of this section, provided the executive director consistently applies such authority.

RCW 42.17A.755(1) (emphasis added).[5]

A. Standard of Review.

Under well-established Washington law, the Plaintiff's Complaint was sufficient to withstand a motion to dismiss, and the dismissal was therefore erroneous. "CR 12(b)(6) motions should be granted only sparingly and with care." *Bravo v. Dolsen Companies*, 125 Wn.2d 745, 750, 888 P.2d

[4] A true and correct copy of RCW 42.17A.775 is attached hereto as **Appendix A.**
[5] A true and correct copy of ch. 42.17A, RCW, as it existed at the time in question and reflecting changes from the prior version, is attached hereto as **Appendix B**. The new Section 16 reflected therein, added by way of the 2018 revisions, was codified at RCW 42.17A.775.

147 (1995) (internal quotations and citation omitted). Not only must all facts alleged in the complaint be accepted as true, but the Court must deny dismissal if any set of facts, consistent with the complaint, would entitle the plaintiff to relief. *Janicki Logging & Construction Co., Inc. v. Schwabe, Williamson & Wyatt, P.C.*, 109 Wn. App. 655, 659, 37 P.3d 309 (2001). As such, dismissal is only proper if "…it appears beyond doubt that the plaintiff cannot prove any set of facts which would justify recovery." *Burton v. Lehman*, 153 Wn.2d 416, 422, 103 P.3d 1230 (2005). It has been recognized in this State that a court may therefore consider, in addition to the facts alleged, hypothetical facts or situations asserted by the complaining party, whether part of the formal record or not. *Bravo*, 125 Wn.2d at 750.

B. The Trial Court Misinterpreted the Plain Meaning of RCW 42.17A.775.

The plain meaning of a statute is to be discerned from the ordinary meaning of the language at issue, the context of the statute in which the provision is found, related provisions, and the statutory scheme as a whole. *Lake v. Woodcreek Homeowners Ass'n*., 169 Wn.2d 516, 526, 243 P.3d 1283 (2010). "A court must, whenever possible, give effect to every word, clause and sentence of a statute." *American Legion Post #149 v. Wash. State Dept. of Health*, 164 Wn.2d 570, 585, 192 P.3d 306 (2008) (internal quotations omitted). Each provision of the statute should be read in relation to the other provisions, and the statute should be construed as a whole. *Key Bank of Puget Sound v. City of Everett*, 67 Wn. App. 914, 917, 841 P.2d 800 (1992). "A word which is not defined in a statute, but which has a well-accepted, ordinary meaning, is not ambiguous." *Wash. State Coal. for the Homeless v. DSHS*, 133 Wn.2d 894, 906, 949 P.2d 1291 (1997).

1. The Statute Plainly Does Not Use "Otherwise" to Mean 'Alternatively,' But the Trial Court Interpreted It as Such.

SEIU PEAF argued (and the trial court appears to have accepted) that the PDC's disposition of the Foundation's Complaint must be effective to foreclose a citizen's action, contending, "[i]n its revised form, the citizen suit provision now mediates all FCPA complaints through the PDC." *See* CP, at 026. At bottom, the defect with that interpretation of RCW 42.17A.755 is that it ignores the plain meaning of the word "otherwise" in subsection (1)(a) and reads it contrary to long-standing canons of statutory interpretation.

In opposing the Foundation's interpretation, which ascribes the same meaning to each of Section 755's uses of the word "otherwise," SEIU PEAF primarily argued below that RCW 42.17A.755(1)(a) should be understood as granting the PDC two (2) "discrete" options – (i) "dismissing the complaint" or (ii) "otherwise resolving the matter in accordance with subsection (2)." *See* CP, at 028. But importantly, SEIU PEAF offered a rather unsatisfactory explanation below (*see* CP, at 098-099) regarding why the Legislature would first use the word "otherwise" to refer to different species of the same genus (as it is used in RCW 42.17A.755(1) with respect to "intiate," "respond," "request," and "resolve"), but then, a few sentences later in subsection (1)(a), use it to mean "alternatively" (dismissal being one option, and having staff deal with technical corrections/remedial violations as the other option). *See Timberline Air Svc., Inc. v. Bell Helicopter-Textron, Inc.*, 125 Wn.2d 305, 313, 884 P.2d 920 (1994).[6]

If Respondents' interpretation were the intended meaning, *the statute could have simply left out this word entirely*, in favor of a comma

[6] "When the same words are used in different parts of the same statute, it is presumed that the Legislature intended that the words have the same meaning."

(*see infra*, at pp. 15-16) and the "disjunctive word 'or'" (*see* CP, at 028) that would accomplish that same purpose of establishing alternatives. *See Homestreet, Inc. v. Dept. of Revenue*, 166 Wn.2d 444, 452, 210 P.3d 297 (2009).[7] Instead, it appears the word "otherwise" was included *specifically* to denote that a dismissal was intended to be included among the ways the PDC could "…resolve the matter in accordance with subsection (2)." *See, e.g., Jin Zhu v. North Cent. Educ. Svc. Dist.-ESD 71*, 189 Wn.2d 607, 620, 404 P.3d 504 (2017) ("This structure strongly suggests that 'otherwise discriminat[ing]' for the purposes of RCW 49.60.210(1) must, at a minimum, include the preceding explicitly specified unfair practices, one of which is an employer's refusal to hire."); *see also Strain v. West Travel, Inc.*, 117 Wn. App. 251, 254-57, 70 P.3d 158 (2003) (rejecting application of last antecedent rule, despite an "errant comma" in the statute, and applying ordinary meaning of "otherwise"). Taking the language of subsection (1)(a) in the context of the entire Section 755, it is clear that if the Legislature had intended dismissal to be a stand-alone option, it would have devoted a separate subparagraph to it. Instead, it grouped dismissals with other resolutions under subsection (2) – which allows the PDC to "delegate authority" for dismissals and other resolutions of only "complaints of remediable violations or requests for technical corrections" to its director, provided such authority is consistently applied.[8]

[7] "Whenever possible, statutes are to be construed so no clause, sentence or word shall be superfluous, void, or insignificant." (citations and internal quotations omitted).

[8] The PDC has delegated such authority, including by way of WAC 390-37-060(1)(a), which addresses the circumstances in which dismissal is appropriate – *i.e.*, where the complaint is "obviously unfounded or frivolous, or outside of the PDC's jurisdiction." Particularly in light of this regulation, it was quite strange for SEIU PEAF to suggest below that "…applying [the] cross-reference of Subsection (2) to 'dismissals' would produce the absurd result that unfounded or frivolous allegations would require the respondent to execute a stipulation and pay a penalty. This cannot be." *See* CP, at 029. This was simply incorrect; SEIU PEAF gave short shrift to the statutory reference to such delegation, in arguing that reading subsections (1) and (2) in harmony will result in "…an infinite loop

As in *Jin Zhu*, consideration of the structure preceding the subsection at issue only buttresses the obvious conclusion that "otherwise" does not mean "alternatively." First, RCW 42.17A.755(1) specifies only three (3) options: (1)(a) mentions dismissals among the other actions "authorized" by subsection (2) and refers to that subsection (2); next, subsection (1)(b) discusses the procedure whereby the PDC would be required to undertake an investigation, pursuant to the authority provided in subsection (3); last, subsection (1)(c) mentions referrals to the Attorney General, pursuant to the authority spelled out in subsection (4). *See* RCW 42.17A.755.

Although each of the potential enforcement possibilities is *mentioned* in subsection (1), they are not there the subject of authorizing language; to the contrary, they are framed as one of the various actions the PDC "**must**" take in response to a complaint. *See* RCW 42.17A.755(1) ("If a complaint is filed with or initiated by the commission, the commission must…") (emphasis added); *see also* RCW 42.17A.775(2) (by way of contrast, "[a] citizen's action may be brought and prosecuted only if the person first has filed a complaint with the commission and: (a) The

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ping-ponging the reader between cross-references to Subsections (1)(a) and (2)(a)," when the PDC attempts to process "technical corrections" or "remedial violations." *Id.* Instead of acknowledging the statutory allowance for discretion in determining when dismissal might be more appropriate than further proceedings for "technical corrections" or "remedial violations," SEIU PEAF focused on the "as appropriate under the circumstances" language in subsection (1) as suggesting that dismissals cannot be grouped with other resolutions of these types of insignificant violations. *See id.* But in requiring the PDC to first conduct a preliminary review before making that determination and ensuring that the choice between dismissal or further proceedings is "appropriate," the statute implies the necessity for some standards which will be used in making the determination. Those standards, which were promulgated in WAC 390-37-060, make clear that dismissals for "obviously unfounded" complaints are grouped conceptually with other summary dispositions of "technical corrections" or "remedial violations"; indeed, these dispositions are discussed in consecutive subsections of the same regulation. *See* WAC 390-37-060(1)(a)-(1)(c). And while subsection (1)(d) of the regulation does purport to allow the disposition of a warning letter for "minor violations," during the relevant time period, this aspect of the regulation lacked not only lacked any statutory authority, but in fact was contrary to the Legislature's definition of "actual violations."

commission has not taken action authorized under RCW 42.17A.755(1) within ninety days of the complaint being filed with the commission…") (emphasis added). In other words, although subsection (1) does clarify that dismissals are procedurally treated the same as other resolutions for the process conducted pursuant to subsection (2), the substantive *authority* for all those resolutions, and the limitation of that authority to "complaints of remedial violations and technical corrections," exists only in subsection (2).[9] RCW 42.17A.755(2) even refers back to subsection (1)(a) – this does not reflect a game of "ping pong," but rather, a judgment by the Legislature that, while the PDC may promulgate rules to determine when to dismiss or "otherwise resolve" less significant violations (defined exclusively as "remedial violations" or "technical corrections"), neither resolution is permissible for "actual violations." *See De Grief v. Seattle*, 50 Wn.2d 1, 11, 297 P.2d 940 (1956) ("It is…well-established…that a court may not place a narrow, literal and technical construction upon a part only of a statute and ignore other relevant parts.").

Instead of applying the "same meaning" rule to "otherwise," it is anticipated that SEIU PEAF will rely (yet again) only upon the "last antecedent" rule, in arguing that the phrase, "in accordance with subsection (2) of this section", must be understood to modify only the immediately-preceding phrase "or otherwise resolve the matter." *See* CP, at 029-030.

[9] SEIU PEAF argued below, incredibly, that "…the Foundation assumes without support that the types of violations referenced in Section 755 are exclusive of any other type." *See* CP, at 031. But the Foundation did not merely or wrongly assume this; the operative statute in 2018 provided as much, in defining "actual violations" to literally mean any "…violation of this chapter that is not a remedial violation or technical correction." *See former* 42.17A.005(2) (2018). In fact, the amendment in the current version of the statute that changes the phrase to "violation" and now excludes "minor violations" (*see current* RCW 42.17A.005(53) (2019)), while simultaneously deleting the definition of "actual violations," is a compelling indication that "minor violations" – to the extent they even existed, since they were *not* a recognized category – were not excluded from the scope of "actual violations" prior to the most recent amendments.

Aside from confusing the issue, that argument illustrates why the "last antecedent" is of limited value in interpreting statutes. The Foundation will not dispute SEIU PEAF's invocation of general rules of grammar, but the real issue is in the meaning of the word "otherwise," *which is included in the purported "last antecedent"* without any demarcation between the options included in that antecedent. Hence, the repetition of the word "otherwise," especially so close to its first use in subsection (1), presents a clear "contrary intention" against applying the phrase, "in accordance with subsection (2)," to modify only the phrase "resolve the matter," and to not include "dismiss the complaint." *See In re Sehome Park Care Center, Inc.*, 127 Wn.2d 775, 781, 903 P.2d 443 (1995) ("The last antecedent rule provides that unless a contrary intention appears in the statute, qualifying words and phrases refer to the last antecedent.") (emphasis added).

At bottom, SEIU PEAF's arguments below, with which the trial court agreed, read a non-existent comma into the statute, and placed that comma after the phrase, "dismiss the complaint." But what the statute actually says is that the PDC may "dismiss the complaint or otherwise resolve the matter in accordance with subsection (2) of this section," all in the same legislative 'breath,' with no comma to indicate any distinction between "dismiss[ing]" and "otherwise resolv[ing]," or to make "in accordance with…" a non-restrictive clause. *See* Bill Drafting Guide 2019, State of Washington, Statute Law Committee, Office of the Code Reviser, Part IV, Section (f) ("Commas"), subsection (ii) (https://leg.wa.gov/CodeReviser/pages/bill_drafting_guide.aspx).[10]

[10] "A nonrestrictive clause is set off by commas, but a restrictive clause, which is essential to the meaning of the word being modified, should not be set off by commas. Compare the following two sentences, which illustrate a restrictive clause and a nonrestrictive clause, respectively: Students who hate football should stay home. Students, who hate football,

"As the name of the rule implies, the last antecedent rule is useful only where the modifier in question has more than one antecedent." *Berrocal v. Fernandez*, 155 Wn.2d 585, 594, 121 P.3d 82 (2005); *cf. City of Spokane v. County of Spokane*, 158 Wn.2d 661, 673-74, 146 P.3d 893 (2006) (relying on absence of comma to hold that last antecedent did not modify prior entries in a serial list). Here, the relevant statute does not use a serial list, nor the comma that SEIU PEAF imputes into the text, and the Respondents identify no textual indication to overcome the "same-meaning" rule, as it applies to "otherwise" (of course, there is none). *See Umpqua Bank v. Shasta Apartments*, LLC, 194 Wn. App. 685, 693, 378 P.3d 585 (2016).[11]

The Court should reverse the dismissal and remand for the trial court to consider the question upon a properly construed statute, such that the PDC did not act on the Foundation's complaint within the specified time periods in a manner which would preclude the Foundation from challenging the PDC's failure to properly interpret and apply the FCPA through this citizen's action.

2. *"Minor Violations" Was Not a Category Available to the PDC in 2018, and the Statute Precluded Recognition of "Minor Violations" by Regulatory Fiat.*

While SEIU PEAF offered to the trial court a number of reasons why its admitted campaign finance violations should be considered only "minor violations," those arguments do not alter the applicable law, which did not recognize "minor violations" as a permissible category for the PDC to rely upon at the time in question.[12] *See* CP, at 023-024. At the relevant

should stay home."

[11] "If a statute is unambiguous, we apply the statute's plain meaning without considering other sources of legislative intent."

[12] Again, it is difficult to take seriously the argument that RCW 42.17A.755 "does not purport to be a taxonomy of violations, much less an exhaustive one." *See* CP, at 031. By

time, in 2018, Section 42.17A.755 limited the PDC's discretion with a mandate that it "must" take one of the actions enumerated therein. Further, the FCPA did not even recognize a category for "minor violations" in its definitions section; if a violation was neither a "technical correction" nor a "remedial violation," it was necessarily an "actual violation" deserving of the PDC's serious attention. *See former* RCW 42.17A.005(2) (2018); *see also Edelman v. Wash. State Public Disclosure Comm'n*, 152 Wn.2d 584, 589, 99 P.3d 386 (2004) ("The PDC argues that Rule 311 interprets a 'gap' in the statutory language…However, as the Court of Appeals correctly noted, the plain language does address it."). Based upon its position below, the Foundation anticipates that SEIU PEAF will rely heavily on WAC 390-37-060 (which *did* exist in 2018), but this reliance will be misplaced.

The PDC's contrary interpretation of the FCPA fails to raise any ambiguity, because it is contrary to the statutory definition of "actual violations," is unreasonable, and violates accepted canons of statutory construction, as discussed *supra*, at **Section IV.B.1**. *See Tesoro Ref. & Mktg. Co. v. Dept. of Revenue*, 164 Wn.2d 310, 317-18, 190 P.3d 28 (2008); *State v. Johnson*, 159 Wn. App. 766, 770, 247 P.3d 11 (2011).[13] As set forth above, Section 755 reflected a legislative judgment that "actual violations" of the Act "*must*" be pursued in one of the foregoing ways. The PDC could

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statutory definition, there were only three (3) kinds of violations; remedial violations, technical corrections and actual violations (*i.e.*, all others). *See supra*, n.9. One can accept SEIU PEAF's position only by determining that "must" does not really mean "must," and ignoring the accepted meaning of the word "otherwise." Even if the unambiguous "must" was missing from the statute, however, SEIU PEAF's argument below that Section 755 only "happens to mention certain kinds of violations" (*see id*.) overlooked the elementary principle of *expressio unius est exclusio alterius. See Killian v. Seattle Publ. Sch.*, 189 Wn.2d 447, 459, 403 P.3d 58 (2017) ("When the legislature expresses one thing in a statute, we infer that omissions are exclusions."); *In re Eaton*, 110 Wn.2d 892, 898, 757 P.2d 961 (1988) ("In the present case, the statute is not ambiguous. It specifically lists those things the juvenile court can do."). All other types of violations were precluded by the FCPA, at the relevant time.

[13] "A possible but strained interpretation…will not render a statute ambiguous."

not simply ignore such violations, or effectively permit them to continue by dismissing "actual" violations as unworthy of further agency attention. Where misconduct did not rise to the level of actual violations (a question which was itself not committed to agency discretion; *see* former RCW 42.17A.005 for definitions of "actual violation," "technical correction," and "remedial violation"), the FCPA already reflected a reasoned decision that the matter could be dealt with at the PDC's discretion – assuming same was exercised evenhandedly – but that "actual violations" could not. The statute thus provided an exception for "technical corrections" and "remedial violations" but, by excluding "actual violations" from this provision, "Section 755…define[d] the class of violations which can be dismissed after preliminary investigation," leaving no "gap" for the PDC to fill by way of WAC 390-37-060.[14] *See* CP, at 032.

The Rule at issue, WAC 390-37-060, existed in substantially identical form prior to the 2018 amendments to the FCPA, and the PDC contended that Rule allowed it to resolve "minor violations" with a mere warning letter. But then, the 2018 amendments to the FCPA set forth a detailed protocol that further limited the PDC's discretion in handling complaints alleging violations of the statute's provisions. *See generally* former RCW 42.17A.755 (2018).[15] Under that protocol, if the PDC determined that an alleged violation was neither a "technical correction" nor a "remedial violation," and was not "obviously unfounded or frivolous," it

[14] Given that the new statute had yet to even be enacted, it is unclear how the PDC's rule could be viewed as "filling the gaps" of an as-yet-unknown statutory scheme.

[15] The Legislature subsequently further amended the FCPA in 2019, including the provisions set forth in RCW 42.17A.005 and RCW 42.17A.755. These amendments were not made effective, however, until May 21, 2019. At the time of SEIU PEAF's violations in 2018, and the Foundation's filing of an administrative complaint as well as the resolution thereof in early 2019, the law in effect was the FCPA as it existed in 2018. As such, references in this Section to the FCPA should be construed as referring to the law in effect at that time.

had to treat it as an "actual violation" – there was no category for "minor violations," or even any mention of such, in the 2018 statute, and that revision removed any gray area that may have previously permitted the PDC to unilaterally recognize such violations. *See generally* RCW 42.17A.755; *see also* former RCW 42.17A.005(2); current RCW 42.17A.005(54). In turn, if an "actual violation" was found – and SEIU PEAF necessarily agreed below that it committed "actual violations" – then the PDC's discretion was limited to either initiating an investigation and conducting further proceedings, or referring the matter to the AG. *See* former RCW 42.17A.755(1)(b), (1)(c).

The PDC cannot alter a statute by adding to it. Moreover, the deference to the PDC that SEIU PEAF urged to the trial court applies only where a statute is ambiguous: "When the statutory language is plain, the statute is not open to construction or interpretation." *Green River Community College, Dist. No. 10 v. Higher Ed. Personnel Bd.*, 95 Wn.2d 108, 113, 622 P.2d 826 (1980). The statute defined only three (3) forms of violations, and "minor violations" were not included. Thus, even if WAC 390-37-060 *had* been in effect prior to the statutory definition of "actual violations," that definition abrogated the WAC. Moreover, "[a]n administrative rule has force of law only if the agency promulgated it with delegated authority." *Pierce Cty. v. State*, 144 Wn. App. 783, 836, 185 P.3d 594 (2008). While an agency may "fill in the gaps" of a general statutory scheme where its rules fall within a general grant of authority, courts should not and do not hesitate to invalidate an agency regulation if it exceeds or conflicts with an agency's statutory authority. *Id*. (*citing Jenkins v. Dept. of*

Social & Health Services, 160 Wn.2d 287, 295, 157 P.3d 388 (2007)); *see also* RCW 34.05.570(2)(c).

The Court's construction of an unambiguous statute should not defer to the administrative interpretation – especially when that interpretation is at odds with the statute and its policy goals. *See Ass'n of Wash. Spirits & Wine Distributors v. Wash. State Liquor Control Bd*., 182 Wn.2d 342, 355, 340 P.3d 849 (2015);[16] *HomeStreet, Inc*., 166 Wn.2d at 451-52.; *PUD No. 1 of Pend Oreille Cty. v. Dept. of Ecology*, 146 Wn.2d 778, 790, 51 P.3d 744 (2002). Such is the case here, because the interpretation reflected in WAC 390-37-060 runs contrary to decades of established policy under the FCPA (*see infra*, at **Section IV.C**). In this instance, as always, it is the emphatic province of the judiciary to "say what the law is," and the Court should not hesitate to reject an agency interpretation that so squarely conflicts with that law. *See, e.g., Killian v. Seattle Publ. Sch*., 189 Wn.2d 447, 459, 403 P.3d 58 (2017) (applying plain meaning and *expressio unius est exclusio alterius* to reject PERC's interpretation of PECBA); *see also Franklin County Sheriff's Office v. Sellers*, 97 Wn.2d 317, 325-26, 646 P.2d 113 (1982) (*citing Overton v. Econ. Assistance Auth.*, 96 Wn.2d 552, 637 P.2d 652 (1981)); *Cockle v. Dept. of Labor & Indus.*, 142 Wn.2d 801, 812, 16 P.3d 583 (2001).

C. Unfettered Enforcement Discretion in the PDC is Anathema to the FCPA's Explicit Policy Goals.

All of the Foundation's foregoing arguments were in accord with the FCPA's stated intention to "…[e]nsure that individuals and interest groups have fair and equal opportunity to influence elective and

[16] "We do not require agency expertise in construing an unambiguous statute, and we do not defer to an agency determination that conflicts with the statute."

governmental processes." *See* RCW 42.17A.400(1).[17] "Initiative 276 was designed to inform the public and its elected representatives of expenditures made by persons whose purpose it is to influence or affect the decision-making processes of government." *State v. Dan J. Evans Campaign Committee*, 86 Wn.2d 503, 507-08, 546 P.2d 75 (1976). Further, the FCPA is perfectly unequivocal in its mandate that it be "…liberally construed to effectuate the policies and purposes of this act." *See* RCW 42.17A.001; *Seeber v. Washington State Public Disclosure Commission*, 96 Wn.2d 135, 140, 634 P.2d 303 (1981) (*citing* former Section 42.17.920).

1. PDC Discretion for "Actual Violations" is Contrary to the FCPA's Policy Goals.

The interpretation set forth in WAC 390-37-060, however, allows the PDC to unilaterally ignore significant, admitted, "actual" violations of the statute that citizens may bring to its attention, based on such amorphous determinations as whether the violation "materially affect[s] the public interest," or whether the information that a political committee fails to disclose is "critical." This untethered discretion cannot be consistent with the Legislature's goals as set forth in the FCPA.

As such, this PDC rule is not an instance of an agency merely "filling in the gaps" of legislation; the PDC has effectively claimed by rule the discretion *not* to carry out its unambiguous statutory mandates as set forth in Section 755, and SEIU PEAF asks this Court to approve that view of the PDC's authority. *See H&H Partnership v. State*, 115 Wn. App. 164, 170, n.14, 62 P.3d 510 (2003) ("[The agency's] argument is unpersuasive because [the statutes] are not ambiguous…Absent ambiguity, there is no

[17] As such, "[t]he provisions…shall be liberally construed to promote complete disclosure of all information respecting the financing of political campaigns and lobbying … so as to assure continuing public confidence of fairness of elections and governmental processes, and so as to assure that the public interest will be fully protected." *See* RCW 42.17A.001.

need for Ecology's expertise in construing the statutes…Similarly, this court will not defer to an agency determination that conflicts with a statute."). The lack of ambiguity in the enforcement scheme of RCW 42.17A.755 – and the fact that its import clearly contradicts the actions undertaken by the PDC – renders administrative deference wholly inappropriate. *See ARCO Prods. Co. v. Washington Utils. & Transp. Comm'n*, 125 Wn.2d 805, 811, 888 P.2d 728 (1995) (*citing Jensen v. Dept. of Ecology*, 102 Wn.2d 109, 685 P.2d 1068 (1984)).

The statute in 2018 simply made no allowance for the PDC to have such broad enforcement discretion where "actual violations" are concerned, and this only makes sense, for that degree of discretion would allow the PDC to ignore significant violations that strike at the heart of the FCPA's strong mandate for public disclosure and accountability. *See* RCW 42.17A.001; *see also* RCW 42.17A.060 ("It is the intent of the legislature to ensure that the commission provide the general public timely access to all contribution and expenditure reports submitted by candidates, continuing political committees, bona fide political parties, lobbyists, and lobbyists' employers. The legislature finds that failure to meet goals for full and timely disclosure threatens to undermine our electoral process.") (emphasis added). Similar to the unauthorized regulatory creation of an "exemption," the PDC's interpretation as set forth in its regulations (which confers upon itself discretion to abdicate its statutory duties) was fundamentally at odds with the FCPA's policy goals, and therefore should not be granted deference. *See Edelman*, 152 Wn.2d at 591 ("Rule 311 limits the effect of RCW 42.17.660, by creating a broad exemption to the single contribution limit where no such exemption exists in the statute.").

2. PDC Discretion to Do Nothing Would Eviscerate the Citizen's Action.

The primary way that the Legislature has protected the interests of "individuals and interest groups" since the FCPA's enactment by initiative, in 1972, has always been through the citizen's action procedure, which has acted as a check on government officials' handling of campaign finance allegations – including decisions not to initiate enforcement proceedings under the Act. *See Utter v. Bldg. Indust. Ass'n of Washington*, 182 Wn.2d 398, 411, 341 P.3d 953 (2015) ("The statute is obviously based on the notion that the government may be wrong, and then it is up to citizens to expose the violation.") (emphasis added). Accordingly, to now allow the PDC's inaction to preclude a citizen's action would remove any ability that a citizen has to ensure that the PDC's decision to forego enforcement action is correct, and would introduce an intolerable degree of administrative discretion in enforcement of a statute that demands transparency. This Court should not countenance that result and should instead reverse the trial court's dismissal of the Freedom Foundations citizen's action.

D. None of SEIU PEAF's Affirmative Defenses Were Sufficient to Preclude the Citizen's Action.

Although the trial court's treatment of Appellee's affirmative defenses are expressly *not* among the points of error that the Foundation seeks to raise in this appeal, it is anticipated that SEIU PEAF will urge its defenses as alternative grounds for affirmance by this Court. As such, the arguments in this **Section IV.D**, are advanced in an abundance of caution, and should not be interpreted as ascribing additional points of error to the trial court's ruling (as it appears Judge Murphy did not rule on the defenses, *see* CP, at 113).

1. The Foundation's Citizen's Action Was Not Barred by Res Judicata*/Collateral Estoppel, and Its Related Appeal Does Not Support a Stay of This Action.*

Res judicata is applicable when a prior judgment and the present action demonstrate an identity of: (i) subject matter; (ii) cause of action; (iii) persons and parties; and (iv) the quality of the persons for or against whom the claim is made. *Rains v. State*, 100 Wn.2d 660, 663, 674 P.2d 165 (1983). "While res judicata bars relitigation of claims necessarily a part of a previous matter in controversy, it poses no bar to claims not in fact adjudicated previously." *Haberman v. Washington Public Power Supply System*, 109 Wn.2d 107, 122, 744 P.2d 1032 (1987). The related doctrine of collateral estoppel applies where the party raising it can demonstrate: (i) identical issues; (ii) a final judgment on the merits; (iii) the party against whom the plea is asserted was a party to or in privity with a party to the prior adjudication; and (iv) application of the doctrine will not work an injustice on the party against whom it is to be applied. *Shoemaker v. City of Bremerton*, 109 Wn.2d 504, 507, 745 P.2d 858 (1987). "In addition, the issue to be decided must have been actually litigated and necessarily determined in the prior action." *Id*., at 508. The party asserting *res judicata* and/or collateral estoppel always bears the burden of proof on these affirmative defenses. *See Luisi Truck Lines v. Wash. Utils. & Transp. Commission*, 72 Wn.2d 887, 895, 435 P.2d 654 (1967); *State v. Williams*, 132 Wn.2d 248, 254, 937 P.2d 1052 (1997).

As a general proposition, collateral estoppel effect may be given to adjudicative decisions of an administrative agency, but such requires a showing on three (3) additional questions: (i) whether the agency acted within its competence; (ii) the differences between procedures in the administrative proceeding and court procedures; and (iii) public policy

considerations. *Christensen v. Grant County Hosp. Dist. No. 1*, 152 Wn.2d 299, 308, 96 P.3d 957 (2004). While the Appellee argued below that administrative decisions may be given preclusive effect (*see* CP, at 033), and recited the foregoing test, it did little to demonstrate its satisfaction and therefore did not carry its burden.

a. Allowing an Administrative Non-Enforcement Disposition to Preclude a Citizen's Action Would Defeat the Public Policy Set Forth in the FCPA.

SEIU PEAF attempted to rely upon issue preclusion, arising from the Foundation's efforts to first have the PDC act upon its allegations, before bringing a citizen's action itself – as is contemplated, and indeed required, by the FCPA. *See* RCW 42.17A.775 ("A citizen's action may be brought and prosecuted only if the person has filed a complaint with the commission…"). While RCW 42.17A.755 provides a number of options, one of which the PDC "must" pursue upon review of an administrative complaint, the FCPA does not intend for "inaction" to be preclusive of a citizen's action – it conspicuously intends precisely the opposite. *See Utter*, 182 Wn.2d at 412. Indeed, the enforcement action that may result from an administrative complaint and the citizen's action serve completely different statutory purposes; the citizen's action is reserved for those very situations where the PDC does not take any of the "actions" authorized by RCW 42.17A.755(1). *See, e.g., Williams*, 132 Wn.2d at 257-58 ("First, the purposes underlying the administrative hearing and the criminal trial in the present case are wholly distinct…Second, allowing this administrative proceeding to bar a criminal action would have broad consequences. It would result in longer administrative hearings and greater delays since the

State would be 'required to marshall [*sic*] all of the prosecution's potential witnesses and evidence at the administrative level.").

Further, to allow the PDC's determinations to bind the hands of the courts in considering citizen's actions would contravene public policy. *See State v. Dupard*, 93 Wn.2d 268, 275-76, 609 P.2d 961 (1980) ("Policy arguments have often been the deciding factor when collateral estoppel is based upon prior administrative determination…We believe public policy dictates rejection of collateral estoppel in this instance."). As was succinctly captured by the Washington Supreme Court's decision in *Utter*, the basic, animating purpose of the citizen's action is to question the decisions of the PDC and subject them to the check of judicial review, *with the full array of truth-seeking devices available to the citizen* (and indeed, to the accused). *See Utter*, 182 Wn.2d at 411 ("Moreover, BIAW's interpretation would defeat the purpose of providing for citizen suits in the first place, because the AG likely declines to sue in exactly those instances where the PDC investigation concludes that no violation occurred. The statute is obviously based on the notion that the government *may be wrong*, and then it is up to citizens to expose the violation.") (emphasis in original).

Similarly here, to credit SEIU PEAF's argument would frustrate the very purpose of creating the citizen's action – and maintaining it over the course of several legislative amendments. *See id*., at 412 ("We hold that RCW 42.17A.765 precludes a citizen suit only where the AG or local prosecuting authorities bring a suit themselves, and it does not preclude a citizen suit where the AG declines to sue."). To wit, it would contravene the salutary public policy of this State that campaign finance violators should face justice, even when the PDC does not have the time (or perhaps, the

inclination) to see to that. *See State v. Vasquez*, 148 Wn. 2d 303, 317-18, 59 P.3d 648 (2002); *State v. Williams*, 132 Wn.2d 248, 257, 937 P.2d 1052 (1997) ("We conclude that public policy simply does not allow a DSHS administrative hearing to prevent the State from prosecuting Williams."); *State v. Cleveland*, 58 Wn. App. 634, 643, 794 P.2d 546 (1990) ("In addition, if the State was faced with application of the doctrine of collateral estoppel to findings in dependency proceedings, there could well be a reluctance to conduct dependency proceedings in cases where one or more of the same issues would arise in subsequent criminal prosecutions."). The Appellees' collateral estoppel argument should be rejected as against public policy,[18] here as it effectively was below.

b. The Foundation Was Not a "Party" to the Administrative Complaint, for Purposes of Res Judicata.

Related to the different capacities in which the administrative proceedings and the instant citizen's action are brought (*see infra*), SEIU PEAF acknowledged the most fundamental defect in its collateral estoppel theory – *i.e.*, the third prong of the general test for collateral estoppel could not be met, because the Foundation was not a "party" to the PDC's brief preliminary review, at least not in the sense that could make application of collateral estoppel an equitable disposition. *See* CP, at 035. While SEIU PEAF attempted to argue that "the PDC clearly permitted the Foundation to

[18] While the third, "policy considerations" prong of the administrative collateral estoppel test overwhelmingly supported the Foundation's ability to maintain a citizen's action, the action was also proper under the first and second prongs. Indeed, although the PDC may be acting within the "competence" it is afforded by the FCPA when it rejects an administrative complaint, the authority conferred by statute is necessarily *not* such as would preclude the citizen's action conferred by the same statute – the Legislature chose not to give the PDC that "competence." Further, there are significant procedural differences between the "adjudications" undertaken by the PDC and the plenary fact-finding that occurs in a judicial setting, even when the PDC undertakes to conduct a full adjudicative proceeding (which, again, it did not do here). *See* WAC 390-37-100. By contrast, the procedures applicable to a preliminary review and dismissal do not remotely approach the degree of formality required by the rules of evidence. *See* WAC 390-37-030.

participate extensively in the investigation" (*see id*.), it had taken the exact opposite position in securing dismissal of the Foundation's APA Petition in the trial court, and maintains that position in currently attempting to convince the Division II Court of Appeals that the Foundation was *not* a "party" under the APA,[19] entitled to seek judicial review of the PDC's dismissal – in the very same matter that formed the basis of the Union's collateral estoppel argument.

While the Foundation maintains that it *was* a "party" within the meaning of the APA, by virtue of the PDC receiving its submissions and providing notice of the decision, it is indisputable that it was not permitted to participate any further in the preliminary review (*see* WAC 390-37-030) – no hearing or further investigation was held, the Foundation was not called upon to offer testimony or further evidence in support of its submissions, and the PDC's dismissal after an informal, preliminary review can only be considered an "adjudication" in the loosest sense of the word.[20] *See, e.g., Loveridge v. Fred Meyer, Inc*., 125 Wn.2d 759, 764, 887 P.2d 898 (1995) ("Respondent Loveridge was not a party to the consent decree between Fred Meyer as defendant and the EEOC as plaintiff in the United States District Court."). None of the issues in the PDC action were "actually litigated," as

[19] Adding to the irony, the APA utilizes effectively the same practical definition of who is considered a "party," for purposes of having standing to seek judicial review, as the Union advanced in the trial court. *See* RCW 34.05.010(12) (defining "party" as either "a person to whom the agency action is specifically directed" or "a person named as a party to the agency proceeding or allowed to intervene or participate as a party in the agency proceeding").

[20] Because of the different capacities in which the administrative complaint and the citizen's action were brought, with the latter being partially for the vindication of public interests, the parties cannot be considered the same between the two (2) matters, even if the Foundation is considered to be a "party" to the administrative determination. *See Southcenter Joint Venture v. National Democratic Policy Committee*, 113 Wn.2d 413, 419 (1989) ("Thus, since the previous action involved a personal right, Southcenter is not in privity with a party to the prior adjudication and collateral estoppel does not apply to prevent relitigation of issues raised in the previous action. This conclusion is bolstered by our rule that the relitigation of an important issue of law should not be foreclosed by collateral estoppel.").

collateral estoppel requires. *See McDaniels*, 108 Wn.2d at 306. If the Foundation was not permitted to prosecute the administrative complaint before the PDC, basic principles of fairness dictate it cannot be held to the PDC's result.

For these reasons, SEIU PEAF in the APA Petition successfully argued to the Thurston County Superior Court that the Foundation was not a party and lacked standing to seek judicial review, in the matter now pending before this Division, as referenced, *supra*, at p. 2. *See, e.g., Int'l Brotherhood of Pulp, Sulphite and Paper Mill Workers v. Delaney*, 73 Wn.2d 956, 960, 442 P.2d 250 (1968) ("Suffice it to say that the International cannot be heard to claim that the defendants were represented in that action, when the International itself objected to the local's being made a party to that action and successfully excluded it."). Whether or not Appellant was strictly a "party" under the APA, such status does not translate to being a "party" for claim preclusion or issue preclusion purposes. The Foundation never had a "full and fair opportunity to litigate" the issues concerning SEIU PEAF's campaign finance violations in the PDC's preliminary review, nor the important matter of statutory interpretation raised by this citizen's action.[21] *See Hadley v. Maxwell*, 144 Wn.2d 306, 312, 27 P.3d 600 (2001) ("To determine whether an injustice will be done, respected authorities urge us to consider whether 'the party against whom the estoppel is asserted [had] interests at stake that would call for a full litigational effort.'"); *Christensen*, 152 Wn.2d at 309

[21] Even if the Foundation had been a "party" before the PDC, it had no ability to challenge the agency's dismissal; this matter of statutory interpretation was for a court to decide. And upon the Foundation's bringing an APA Petition for that purpose, the petition was dismissed by Judge Skinder for lack of standing, so the issue on the merits has never been litigated anywhere, despite its obvious public importance for the citizens of this State.

("Accordingly, applying collateral estoppel may be improper where the issue is first determined after an informal, expedited hearing with relaxed evidentiary standards."). All of the settled grounds for application of preclusion principles were absent in the action below.[22]

c. The Issues Here Are Not the Same as Those Decided in the Administrative Complaint.

As a result of the dual enforcement scheme that has existed from the inception of the FCPA's citizen's action in 1972, the Defendant fails to satisfy most (if not all) of the foregoing prongs for collateral estoppel. The citizen's action option is not even available at the time the administrative complaint requesting official enforcement action is filed (indeed, the first notice of the violations is a condition precedent to the citizen's action, *see* RCW 42.17A.775(2)), so it is highly doubtful whether it could even address the same issues or whether an administrative decree could accordingly be considered a final judgment as to any of the issues in a citizen's action. *See Weaver v. City of Everett*, 194 Wn.2d 464, 480, 450 P.3d 177 (2019) ("Specifically, a 'cause of action which did not exist at the time of a former judgment could not have been the subject-matter of the action sustaining the judgment.'"); *Haberman*, 109 Wn.2d at 122 ("While res judicata bars

[22] The lack of any meaningful opportunity for the Foundation to litigate these issues distinguished the principal authorities relied upon by Appellee. *See Rains v. State*, 100 Wn.2d 660, 666, 674 P.2d 165 (1983) ("He had an unencumbered, full and fair opportunity to litigate his claim in a neutral forum – federal district court."); *Christensen*, 152 Wn.2d at 316 ("The union's lawyer acted on Christensen's behalf, and made an opening statement, called witnesses, cross-examined Samaritan's witnesses, offered exhibits, and made evidentiary objections."); *Reninger v. State, Dept. of Corrections*, 134 Wn.2d 437, 454, 951 P.2d 782 (1998) ("It was only after their lack of success in the administrative arena that they relabeled their claims as wrongful discharge and tortious interference, and relitigated the identical issues before a jury in a civil trial."); *Barlindal v. City of Bonney Lake*, 84 Wn. App. 135, 144, 925 P.2d 1289 (1996) ("The record shows that Bonney Lake had an opportunity to present evidence and arguments in the criminal proceeding; its police conducted the initial investigation and presented the affidavit of probable cause; its police testified and its affidavit was reviewed at the criminal trial."); *Cunningham v. State*, 61 Wn.App. 562, 569-70, 811 P.2d 225 (1991) ("Cunningham fully and vigorously litigated the discretionary function exception issue in the first [federal court] proceeding…Moreover, the issue decided was a purely legal one governed solely by federal law.").

relitigation of claims necessarily a part of a previous matter in controversy, it poses no bar to claims not in fact adjudicated previously."); *Haslund v. City of Seattle*, 86 Wn.2d 607, 623, 547 P.2d 1221 (1976) (prior ruling in mandamus proceedings did not preclude party from litigating city's tort liability for issuing invalid building permit).

It is presumably also for this reason that SEIU PEAF did not explicitly raise *res judicata* as a defense below, but the principle extends to matters of collateral estoppel. *See, e.g., McDaniels v. Carlson*, 108 Wn.2d 299, 305, 738 P.2d 254 (1987) ("Collateral estoppel requires that the issue decided in the prior adjudication is identical with the one at hand…Where an issue arises in two entirely different contexts, this requirement is not met.") (*citing Luisi Truck Lines, Inc. v. Wash. Utils. & Transp. Comm'n*, 72 Wn.2d 887, 894, 435 P.2d 654 (1967)). Even if the PDC's dismissal had been a final judgment, involving *some* of the same issues as a citizen's action, the fact that the Foundation could not even bring a citizen's action contemporaneously with its administrative complaint would have rendered collateral estoppel unjust under the fourth prong of the general test. *See Luisi*, 72 Wn.2d at 896 ("There is nothing, however, in the doctrine…which encourages the court to so apply it as to ignore principles of right and justice…It is generally recognized that the doctrine…(and this applies to that branch known as collateral estoppel) is not to be applied so rigidly as to defeat the ends of justice, or to work an injustice.").

2. The Priority of Action Rule Does Not Support a Stay Here.

As a hedge to its collateral estoppel argument, SEIU PEAF argued alternatively to the trial court that a stay was warranted, under the priority of action doctrine, which it acknowledged "…is intertwined with res

judicata and collateral estoppel principles." *See* CP, at 041. What SEIU PEAF failed to advise Judge Murphy of, however, is that application of the doctrine actually depends upon being able to make a showing of *res judicata*, at least as to the identity of actions. *See Atlantic Cas. Ins. Co. v. Oregon Mut. Ins. Co.*, 137 Wn. App. 296, 302, 153 P.3d 211 (2007) ("This identity between the actions must be such that a decision in one court would, as res judicata, bar further proceedings in the other court."). As discussed above, any *res judicata* argument fails at the outset, because the FCPA's highly detailed and partitioned scheme prevents there from being an identity of actions between a citizen's action and the administrative proceedings that must precede it. *See supra*, at pp. 26-32. This disparity between the actions is independent of any issue concerning identity of parties (but again, even if the Foundation was a "party" to the administrative complaint, its different capacity there renders the parties different here), and the money judgment sought by the Foundation below was but one of the items of relief sought pursuant to the APA, in the Foundation's petition for judicial review. *See, e.g., American Mobile Homes of Washington, Inc. v. Seattle-First Nat. Bank*, 115 Wn.2d 307, 320, 796 P.2d 1276 (1990).[23]

SEIU PEAF did point out to the trial court an important consideration *against* a stay; namely, the decision under appeal in the APA Petition, upon which it relies, was predicated on a supposed lack of standing. *See* CP, at 042. As such, while it is "possible, though not [at all] certain" that the Court of Appeals could issue a ruling on the merits of the statutory question that has some implication for this citizen's action, SEIU

[23] "Here, there is no identity of subject matter, relief, or parties. The subject matter and relief sought overlaps because both American and Seattle-First seek a determination of the validity of the recourse provisions. American, however, seeks various other forms of relief."

PEAF's argument for a stay below was facially speculative, as would be any such argument here. *See id*. ("Should that occur, the appellate court's decision will have a preclusive effect in this case."). SEIU PEAF cited *Bunch v. Nationwide Mut. Ins. Co*., 180 Wn. App. 37, 49, 321 P.3d 266 (2014), for the notion that such conjecture is sufficient to carry its burden, but the analogy is unavailing. In that case, there was no question in the first proceeding of standing, or jurisdiction generally, that might operate to entirely avoid consideration of the merits issue. *See Bunch*, 180 Wn. App. at 40. Moreover, the competency of the previous decision presented no obstacle for application of collateral estoppel principles in that case, because the forum in the first proceeding was a federal court, not an administrative agency. *See Bunch*, 180 Wn. App. at 47-48. *Bunch* is simply too factually dissimilar to have significance here, and SEIU PEAF offered to the trial court no other authority or equitable argument in support of a stay. The trial court appears to have declined to consider a stay, as should this Court.

3. The Citizen's Action Was Timely, Under Any Sensical Reading of the Statute.

The Defendant also attempted to rely upon its position in a separate appeal, the resolution of which is still pending in the Washington State Supreme Court, as of this filing. *See* CP, at 040-041; *see also Freedom Foundation v. Teamsters Local 117 Segregated Fund, et al*., No. 97109-9 (consolidated with Nos. 97111-1 and 97394-6). It has not yet been determined whether SEIU PEAF's position in those consolidated appeals will even prevail. In a nutshell, however, this matter presents the absurd result that Appellees' position would yield with respect to the conditions precedent under former RCW 42.17A.765 – because the current Section 775

removes the second ten-day reference upon which the Unions collectively relied there, but "…the amended filing requirements still oblige a complainant to promise the notice's recipient that he will file suit within a particular timeframe," according to SEIU PEAF. *See* CP, at 020.

In 2018, at the time relevant to this citizen's action (and indeed, still today), the relevant FCPA provision included only a single, operative "10-day" waiting period, during which the government could, by initiating enforcement litigation, act to deprive the citizen of the ability to control the litigation. *See* RCW 42.17A.755. SEIU PEAF argued that the Foundation nonetheless must initiate the citizen's action within that same, ten-day period! Accordingly, *if* the Court were to credit Appellee's interpretation of the pre-2018 version of RCW 42.17A.765, and apply it to the new statute with different language, the Foundation will have been held to have missed its 10-day window to file a claim, *before the State officials even had their ten-day "notice period,*" resulting in an intractable logical conundrum. *See* CP, at 040. (SEIU PEAF argued "[h]owever, in contrast to the pre-2018 provision, Section 775(3)'s trigger for commencing an action 'within ten days' is not tied to the inaction of a third party (*i.e.*, the recipient officers' 'failure' to act), but is freestanding.").

Such a result should be avoided, in all instances, as contrary to the obvious policy aims of the statute. *See, e.g., State v. Leech*, 114 Wn.2d 700, 709, 790 P.2d 160 (1990) ("To apply the 'in furtherance of' language only to the time in which an arson fire is being set is to achieve an absurd consequence, i.e., a situation in which an arsonist whose fire kills will almost never be liable for murder."); *Janovich v. Herron*, 91 Wn.2d 767,

771, 592 P.2d 1096 (1979).[24] It should certainly not be given effect by this Court, when the trial court did not even rule on this patently erroneous contention.

V. CONCLUSION.

SEIU PEAF admitted it failed to disclose the source of $2.8 million, of which it gave some three-quarters of a million dollars to Washington State political campaigns. Notwithstanding this was the *second* substantiated allegation within twelve months that the national political committee violated Washington's campaign finance disclosure laws, the Public Disclosure Commission did nothing more than tell SEIU PEAF it better start behaving.

If the trial court's analyses are correct below and in the APA Appeal, then the FCPA creates rights enjoyed by Washington citizens but provides no remedy for their violation, including seeking vindication in the courts of this State, and thus leaves "actual violations" unredressed, not merely "minor violations." The Foundation does not dispute that the 2018 FCPA amendments worked significant changes to the *procedures* for invoking a citizen's action under the Statute, but they did not purport to completely foreclose a citizen from bringing a citizen's action. That procedure has existed in the statute ever since it was enacted via ballot initiative, in 1972, and to read it out of the current statute (for any class of PDC decisions) flouts the will of the people as so forcefully articulated in the FCPA. It cannot be overemphasized that no statute, particularly not one dedicated to

[24] "Janovich contends, however, that the language of the statute is plain on its face and must be accorded the meaning he proposes, even at the cost of a substantial curtailment of the recall right. This contention is unpersuasive. Admittedly, given the apparent purpose of the statute, the use of the term 'within' is inartful. However, a 'fundamental guide to statutory construction is that the spirit or intention of the law prevails over the letter of the law.'"

the lofty goals of government transparency and an even electoral playing field, should be interpreted to handicap its own policy goals.

The trial court's interpretation of Sections 755 and 775 is contrary to the plain meaning of those provisions, considered in the context of the entire FCPA, because it disregards the meaning of the word "otherwise," as well as the Legislature' own guidance for drafting statutes and the use of punctuation therein. The interpretation below violates accepted canons of statutory construction, renders hollow the purposes of the FCPA, and cannot be justified by reference to principles of administrative deference. The ruling below is simply wrong, as *Utter* plainly envisioned government decisions sometimes would be, and should be reversed. The Court should also remand this matter to the trial court, for further proceedings consistent therewith.

RESPECTFULLY SUBMITTED on December 2, 2020.

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DECLARATION OF SERVICE

I, Jennifer Matheson, hereby declare under penalty of perjury under the laws of the State of Washington that on December 2, 2020, I filed the foregoing document in the Washington State Court of Appeals Division II and served a courtesy copy via email to the following:

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Dated: December 2, 2020, at Olympia, Washington.

Jennifer Matheson

APPENDIX A

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

West's Revised Code of Washington Annotated
Title 42. Public Officers and Agencies (Refs & Annos)
Chapter 42.17A. Campaign Disclosure and Contribution (Refs & Annos)
Enforcement

West's RCWA **42.17A.775**

42.17A.775. Citizen's action

Effective: May 21, 2019
Currentness

(1) A person who has reason to believe that a provision of this chapter is being or has been violated may bring a citizen's action in the name of the state, in accordance with the procedures of this section.

(2) A citizen's action may be brought and prosecuted only if the person first has filed a complaint with the commission and:

(a) The commission has not taken action authorized under RCW 42.17A.755(1) within ninety days of the complaint being filed with the commission, and the person who initially filed the complaint with the commission provided written notice to the attorney general in accordance with RCW 42.17A.755(5) and the attorney general has not commenced an action, or published a decision whether to commence action pursuant to RCW 42.17A.765(1)(b), within forty-five days of receiving the notice;

(b) For matters referred to the attorney general within ninety days of the commission receiving the complaint, the attorney general has not commenced an action, or published a decision whether to commence an action pursuant to RCW 42.17A.765(1)(b), within forty-five days of receiving referral from the commission; and

(c) The person who initially filed the complaint with the commission has provided notice of a citizen's action in accordance with subsection (3) of this section and the commission or the attorney general has not commenced action within the ten days provided under subsection (3) of this section.

(3) To initiate the citizen's action, after meeting the requirements under subsection (2) (a) and (b) of this section, a person must notify the attorney general and the commission that the person will commence a citizen's action within ten days if the commission does not take action authorized under RCW 42.17A.755(1), or the attorney general does not commence an action or publish a decision whether to commence an action pursuant to RCW 42.17A.765(1)(b). The attorney general and the commission must notify the other of its decision whether to commence an action.

(4) The citizen's action must be commenced within two years after the date when the alleged violation occurred and may not be commenced against a committee or incidental committee before the end of such period if the committee or incidental committee has received an acknowledgment of dissolution.

(5) If the person who brings the citizen's action prevails, the judgment awarded shall escheat to the state, but he or she shall be entitled to be reimbursed by the state for reasonable costs and reasonable attorneys' fees the person incurred. In the case of a citizen's action that is dismissed and that the court also finds was brought without reasonable cause, the court may order the person commencing the action to pay all trial costs and reasonable attorneys' fees incurred by the defendant.

Credits

[2019 c 428 § 40, eff. May 21, 2019; 2018 c 304 § 16, eff. June 7, 2018.]

OFFICIAL NOTES

Effective date--Finding--Intent--2019 c 428: See notes following RCW 42.17A.160.

Finding--Intent--2018 c 304: See note following RCW 42.17A.235.

West's RCWA **42**.**17A**.**775**, WA ST **42**.**17A**.**775**
Current with all effective legislation from the 2020 Regular Session of the Washington Legislature.

End of Document

APPENDIX B

2018 Wash. Legis. Serv. Ch. 304 (S.H.B. 2938) (WEST)

WASHINGTON 2018 LEGISLATIVE SERVICE

65th Legislature, 2018 Regular Session

Additions are indicated by **Text**; deletions by
~~Text~~ .
Vetoes are indicated by ~~Text~~ ;
stricken material by ~~**Text**~~ .

CHAPTER 304
S.H.B. No. 2938
CAMPAIGN FINANCE

AN ACT Relating to campaign finance law enforcement and reporting; amending RCW 42.17A.055, 42.17A.110, 42.17A.225, 42.17A.235, 42.17A.240, 42.17A.255, 42.17A.265, 42.17A.450, 42.17A.750, 42.17A.755, 42.17A.765, and 42.17A.770; reenacting and amending RCW 42.17A.005 and 42.17A.220; adding new sections to chapter 42.17A RCW; creating a new section; and making appropriations.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec. 1.** The legislature finds that state campaign finance laws are intended to provide maximum transparency to the public and voters so they may know who is funding political campaigns and how those campaigns spend their money. Additionally, our campaign finance laws should not be so complex and complicated that volunteers and newcomers to the political process cannot understand the rules or have difficulty following them. The legislature believes that our campaign finance laws should not be a barrier to participating in the political process, but instead encourage people to participate in the process by ensuring a level playing field and a predictable enforcement mechanism. The legislature intends to simplify the political reporting and enforcement process without sacrificing transparency and the public's right to know who funds political campaigns. The legislature also intends to expedite the public disclosure commission's enforcement procedures so that remedial campaign finance violations can be dealt with administratively.

The intent of the law is not to trap or embarrass people when they make honest remediable errors. A majority of smaller campaigns are volunteer-driven and most treasurers are not professional accountants. The public disclosure commission should be guided to review and address major violations, intentional violations, and violations that could change the outcome of an election or materially affect the public interest.

Sec. 2. RCW 42.17A.005 and 2011 c 145 s 2 and 2011 c 60 s 19 are each reenacted and amended to read as follows:

<< WA ST 42.17A.005 >>

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) “Actual malice” means to act with knowledge of falsity or with reckless disregard as to truth or falsity.

(2) **“Actual violation” means a violation of this chapter that is not a remedial violation or technical correction.**

(3) “Agency” includes all state agencies and all local agencies. “State agency” includes every state office, department, division, bureau, board, commission, or other state agency. “Local agency” includes every county, city, town, municipal corporation,

quasi-municipal corporation, or special purpose district, or any office, department, division, bureau, board, commission, or agency thereof, or other local public agency.

~~(3)~~ **(4)** "Authorized committee" means the political committee authorized by a candidate, or by the public official against whom recall charges have been filed, to accept contributions or make expenditures on behalf of the candidate or public official.

~~(4)~~ **(5)** "Ballot proposition" means any "measure" as defined by RCW 29A.04.091, or any initiative, recall, or referendum proposition proposed to be submitted to the voters of the state or any municipal corporation, political subdivision, or other voting constituency from and after the time when the proposition has been initially filed with the appropriate election officer of that constituency before its circulation for signatures.

~~(5)~~ **(6)** "Benefit" means a commercial, proprietary, financial, economic, or monetary advantage, or the avoidance of a commercial, proprietary, financial, economic, or monetary disadvantage.

~~(6)~~ **(7)** "Bona fide political party" means:

(a) An organization that has been recognized as a minor political party by the secretary of state;

(b) The governing body of the state organization of a major political party, as defined in RCW 29A.04.086, that is the body authorized by the charter or bylaws of the party to exercise authority on behalf of the state party; or

(c) The county central committee or legislative district committee of a major political party. There may be only one legislative district committee for each party in each legislative district.

~~(7)~~ **(8) "Books of account" means:**

(a) In the case of a campaign or political committee, a ledger or similar listing of contributions, expenditures, and debts, such as a campaign or committee is required to file regularly with the commission, current as of the most recent business day; or

(b) In the case of a commercial advertiser, details of political advertising or electioneering communications provided by the advertiser, including the names and addresses of persons from whom it accepted political advertising or electioneering communications, the exact nature and extent of the services rendered and the total cost and the manner of payment for the services.

(9) "Candidate" means any individual who seeks nomination for election or election to public office. An individual seeks nomination or election when he or she first:

(a) Receives contributions or makes expenditures or reserves space or facilities with intent to promote his or her candidacy for office;

(b) Announces publicly or files for office;

(c) Purchases commercial advertising space or broadcast time to promote his or her candidacy; or

(d) Gives his or her consent to another person to take on behalf of the individual any of the actions in (a) or (c) of this subsection.

~~(8)~~ **(10)** "Caucus political committee" means a political committee organized and maintained by the members of a major political party in the state senate or state house of representatives.

~~(9)~~ **(11)** "Commercial advertiser" means any person who sells the service of communicating messages or producing printed material for broadcast or distribution to the general public or segments of the general public whether through the use of newspapers, magazines, television and radio stations, billboard companies, direct mail advertising companies, printing companies, or otherwise.

~~(10)~~ **(12)** "Commission" means the agency established under RCW 42.17A.100.

~~(11)~~ **(13) "Committee" unless the context indicates otherwise, includes any candidate, ballot measure, recall, political, or continuing committee.**

(14) "Compensation" unless the context requires a narrower meaning, includes payment in any form for real or personal property or services of any kind. For the purpose of compliance with RCW 42.17A.710, "compensation" does not include per diem allowances or other payments made by a governmental entity to reimburse a public official for expenses incurred while the official is engaged in the official business of the governmental entity.

~~(12)~~ **(15)** "Continuing political committee" means a political committee that is an organization of continuing existence not established in anticipation of any particular election campaign.

~~(13)~~ **(16)**(a) "Contribution" includes:

(i) A loan, gift, deposit, subscription, forgiveness of indebtedness, donation, advance, pledge, payment, transfer of funds between political committees, or anything of value, including personal and professional services for less than full consideration;

(ii) An expenditure made by a person in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a political committee, the person or persons named on the candidate's or committee's registration form who direct expenditures on behalf of the candidate or committee, or their agents;

(iii) The financing by a person of the dissemination, distribution, or republication, in whole or in part, of broadcast, written, graphic, or other form of political advertising or electioneering communication prepared by a candidate, a political committee, or its authorized agent;

(iv) Sums paid for tickets to fund-raising events such as dinners and parties, except for the actual cost of the consumables furnished at the event.

(b) "Contribution" does not include:

(i) ~~Standard~~ **Legally accrued** interest on money deposited in a political committee's account;

(ii) Ordinary home hospitality;

(iii) A contribution received by a candidate or political committee that is returned to the contributor within ~~five~~ **ten** business days of the date on which it is received by the candidate or political committee;

(iv) A news item, feature, commentary, or editorial in a regularly scheduled news medium that is of primary interest to the general public, that is in a news medium controlled by a person whose business is that news medium, and that is not controlled by a candidate or a political committee;

(v) An internal political communication primarily limited to the members of or contributors to a political party organization or political committee, or to the officers, management staff, or stockholders of a corporation or similar enterprise, or to the members of a labor organization or other membership organization;

(vi) The rendering of personal services of the sort commonly performed by volunteer campaign workers, or incidental expenses personally incurred by volunteer campaign workers not in excess of fifty dollars personally paid for by the worker. "Volunteer services," for the purposes of this subsection, means services or labor for which the individual is not compensated by any person;

(vii) Messages in the form of reader boards, banners, or yard or window signs displayed on a person's own property or property occupied by a person. However, a facility used for such political advertising for which a rental charge is normally made must be reported as an in-kind contribution and counts towards any applicable contribution limit of the person providing the facility;

(viii) Legal or accounting services rendered to or on behalf of:

(A) A political party or caucus political committee if the person paying for the services is the regular employer of the person rendering such services; or

(B) A candidate or an authorized committee if the person paying for the services is the regular employer of the individual rendering the services and if the services are solely for the purpose of ensuring compliance with state election or public disclosure laws; or

(ix) The performance of ministerial functions by a person on behalf of two or more candidates or political committees either as volunteer services defined in (b)(vi) of this subsection or for payment by the candidate or political committee for whom the services are performed as long as:

(A) The person performs solely ministerial functions;

(B) A person who is paid by two or more candidates or political committees is identified by the candidates and political committees on whose behalf services are performed as part of their respective statements of organization under RCW 42.17A.205; and

(C) The person does not disclose, except as required by law, any information regarding a candidate's or committee's plans, projects, activities, or needs, or regarding a candidate's or committee's contributions or expenditures that is not already publicly available from campaign reports filed with the commission, or otherwise engage in activity that constitutes a contribution under (a)(ii) of this subsection.

A person who performs ministerial functions under this subsection ~~(13)~~ **(16)**(b)(ix) is not considered an agent of the candidate or committee as long as he or she has no authority to authorize expenditures or make decisions on behalf of the candidate or committee.

(c) Contributions other than money or its equivalent are deemed to have a monetary value equivalent to the fair market value of the contribution. Services or property or rights furnished at less than their fair market value for the purpose of assisting any candidate or political committee are deemed a contribution. Such a contribution must be reported as an in-kind contribution at its fair market value and counts towards any applicable contribution limit of the provider.

~~(14)~~ **(17)** "Depository" means a bank, mutual savings bank, savings and loan association, or credit union doing business in this state.

~~(15)~~ **(18)** "Elected official" means any person elected at a general or special election to any public office, and any person appointed to fill a vacancy in any such office.

~~(16)~~ **(19)** "Election" includes any primary, general, or special election for public office and any election in which a ballot proposition is submitted to the voters. An election in which the qualifications for voting include other than those requirements set forth in Article VI, section 1 (Amendment 63)of the Constitution of the state of Washington shall not be considered an election for purposes of this chapter.

~~(17)~~ **(20)** "Election campaign" means any campaign in support of or in opposition to a candidate for election to public office and any campaign in support of, or in opposition to, a ballot proposition.

~~(18)~~ **(21)** "Election cycle" means the period beginning on the first day of January after the date of the last previous general election for the office that the candidate seeks and ending on December 31st after the next election for the office. In the case of a special election to fill a vacancy in an office, "election cycle" means the period beginning on the day the vacancy occurs and ending on December 31st after the special election.

~~(19)~~ **(22)**(a) "Electioneering communication" means any broadcast, cable, or satellite television ~~or~~ **,** radio transmission, **digital communication,** United States postal service mailing, billboard, newspaper, or periodical that:

(i) Clearly identifies a candidate for a state, local, or judicial office either by specifically naming the candidate, or identifying the candidate without using the candidate's name;

(ii) Is broadcast, transmitted **electronically or by other means**, mailed, erected, distributed, or otherwise published within sixty days before any election for that office in the jurisdiction in which the candidate is seeking election; and

(iii) Either alone, or in combination with one or more communications identifying the candidate by the same sponsor during the sixty days before an election, has a fair market value of one thousand dollars or more.

(b) "Electioneering communication" does not include:

(i) Usual and customary advertising of a business owned by a candidate, even if the candidate is mentioned in the advertising when the candidate has been regularly mentioned in that advertising appearing at least twelve months preceding his or her becoming a candidate;

(ii) Advertising for candidate debates or forums when the advertising is paid for by or on behalf of the debate or forum sponsor, so long as two or more candidates for the same position have been invited to participate in the debate or forum;

(iii) A news item, feature, commentary, or editorial in a regularly scheduled news medium that is:

(A) Of primary interest to the general public;

(B) In a news medium controlled by a person whose business is that news medium; and

(C) Not a medium controlled by a candidate or a political committee;

(iv) Slate cards and sample ballots;

(v) Advertising for books, films, dissertations, or similar works (A) written by a candidate when the candidate entered into a contract for such publications or media at least twelve months before becoming a candidate, or (B) written about a candidate;

(vi) Public service announcements;

(vii) ~~A mailed~~ **An** internal political communication primarily limited to the members of or contributors to a political party organization or political committee, or to the officers, management staff, or stockholders of a corporation or similar enterprise, or to the members of a labor organization or other membership organization;

(viii) An expenditure by or contribution to the authorized committee of a candidate for state, local, or judicial office; or

(ix) Any other communication exempted by the commission through rule consistent with the intent of this chapter.

~~(20)~~ **(23)** "Expenditure" includes a payment, contribution, subscription, distribution, loan, advance, deposit, or gift of money or anything of value, and includes a contract, promise, or agreement, whether or not legally enforceable, to make an expenditure. "Expenditure" also includes a promise to pay, a payment, or a transfer of anything of value in exchange for goods, services, property, facilities, or anything of value for the purpose of assisting, benefiting, or honoring any public official or candidate, or assisting in furthering or opposing any election campaign. For the purposes of this chapter, agreements to make expenditures, contracts, and promises to pay may be reported as estimated obligations until actual payment is made. "Expenditure" shall not include the partial or complete repayment by a candidate or political committee of the principal of a loan, the receipt of which loan has been properly reported.

~~(21)~~ **(24)** "Final report" means the report described as a final report in RCW 42.17A.235(2).

~~(22)~~ **(25)** "General election" for the purposes of RCW 42.17A.405 means the election that results in the election of a person to a state or local office. It does not include a primary.

~~(23)~~ **(26)** "Gift" has the definition in RCW 42.52.010.

~~(24)~~ **(27)** "Immediate family" includes the spouse or domestic partner, dependent children, and other dependent relatives, if living in the household. For the purposes of the definition of "intermediary" in this section, "immediate family" means an individual's spouse or domestic partner, and child, stepchild, grandchild, parent, stepparent, grandparent, brother, half brother, sister, or half sister of the individual and the spouse or the domestic partner of any such person and a child, stepchild, grandchild, parent, stepparent, grandparent, brother, half brother, sister, or half sister of the individual's spouse or domestic partner and the spouse or the domestic partner of any such person.

~~(25)~~ **(28)** "Incumbent" means a person who is in present possession of an elected office.

~~(26)~~ **(29)(a)** "Independent expenditure" means an expenditure that has each of the following elements:

~~(a)~~ **(i)** It is made in support of or in opposition to a candidate for office by a person who is not ~~(i)~~ **:**

(A) A candidate for that office~~, (ii)~~ **;**

(B) An authorized committee of that candidate for that office~~, (iii)~~ **; and**

(C) A person who has received the candidate's encouragement or approval to make the expenditure, if the expenditure pays in whole or in part for political advertising supporting that candidate or promoting the defeat of any other candidate or candidates for that office~~, or (iv)~~ **;**

(ii) It is made in support of or in opposition to a candidate for office by a person with whom the candidate has **not** collaborated for the purpose of making the expenditure, if the expenditure pays in whole or in part for political advertising supporting that candidate or promoting the defeat of any other candidate or candidates for that office;

~~(b)~~ **(iii)** The expenditure pays in whole or in part for political advertising that either specifically names the candidate supported or opposed, or clearly and beyond any doubt identifies the candidate without using the candidate's name; and

~~(c)~~ **(iv)** The expenditure, alone or in conjunction with another expenditure or other expenditures of the same person in support of or opposition to that candidate, has a value of ~~eight hundred dollars~~ **one-half the contribution limit from an individual per election** or more. A series of expenditures, each of which is under ~~eight hundred dollars~~ **one-half the contribution limit from an individual per election**, constitutes one independent expenditure if their cumulative value is ~~eight hundred dollars~~ **one-half the contribution limit from an individual per election** or more.

~~(27)~~ **(b) "Independent expenditure" does not include: Ordinary home hospitality; communications with journalists or editorial staff designed to elicit a news item, feature, commentary, or editorial in a regularly scheduled news medium that is of primary interest to the general public, controlled by a person whose business is that news medium, and not controlled by a candidate or a political committee; participation in the creation of a publicly funded voters pamphlet statement in written or video form; an internal political communication primarily limited to contributors to a political party organization or political action committee, the officers, management staff, and stockholders of a corporation or similar enterprise, or the members of a labor organization or other membership organization; or the rendering of personal services of the sort commonly performed by volunteer campaign workers or incidental expenses personally incurred by volunteer campaign workers not in excess of two hundred fifty dollars personally paid for by the worker.**

(30)(a) "Intermediary" means an individual who transmits a contribution to a candidate or committee from another person unless the contribution is from the individual's employer, immediate family, or an association to which the individual belongs.

(b) A treasurer or a candidate is not an intermediary for purposes of the committee that the treasurer or candidate serves.

(c) A professional fund-raiser is not an intermediary if the fund-raiser is compensated for fund-raising services at the usual and customary rate.

(d) A volunteer hosting a fund-raising event at the individual's home is not an intermediary for purposes of that event.

~~(28)~~ **(31)** "Legislation" means bills, resolutions, motions, amendments, nominations, and other matters pending or proposed in either house of the state legislature, and includes any other matter that may be the subject of action by either house or any committee of the legislature and all bills and resolutions that, having passed both houses, are pending approval by the governor.

~~(29)~~ **(32)** "Legislative office" means the office of a member of the state house of representatives or the office of a member of the state senate.

~~(30)~~ **(33)** "Lobby" and "lobbying" each mean attempting to influence the passage or defeat of any legislation by the legislature of the state of Washington, or the adoption or rejection of any rule, standard, rate, or other legislative enactment of any state agency under the state administrative procedure act, chapter 34.05 RCW. Neither "lobby" nor "lobbying" includes an association's or other organization's act of communicating with the members of that association or organization.

~~(31)~~ **(34)** "Lobbyist" includes any person who lobbies either in his or her own or another's behalf.

~~(32)~~ **(35)** "Lobbyist's employer" means the person or persons by whom a lobbyist is employed and all persons by whom he or she is compensated for acting as a lobbyist.

~~(33)~~ **(36)** "Ministerial functions" means an act or duty carried out as part of the duties of an administrative office without exercise of personal judgment or discretion.

~~(34)~~ **(37)** "Participate" means that, with respect to a particular election, an entity:

(a) Makes either a monetary or in-kind contribution to a candidate;

(b) Makes an independent expenditure or electioneering communication in support of or opposition to a candidate;

(c) Endorses a candidate before contributions are made by a subsidiary corporation or local unit with respect to that candidate or that candidate's opponent;

(d) Makes a recommendation regarding whether a candidate should be supported or opposed before a contribution is made by a subsidiary corporation or local unit with respect to that candidate or that candidate's opponent; or

(e) Directly or indirectly collaborates or consults with a subsidiary corporation or local unit on matters relating to the support of or opposition to a candidate, including, but not limited to, the amount of a contribution, when a contribution should be given, and what assistance, services or independent expenditures, or electioneering communications, if any, will be made or should be made in support of or opposition to a candidate.

~~(35)~~ **(38)** "Person" includes an individual, partnership, joint venture, public or private corporation, association, federal, state, or local governmental entity or agency however constituted, candidate, committee, political committee, political party, executive committee thereof, or any other organization or group of persons, however organized.

~~(36)~~ **(39)** "Political advertising" includes any advertising displays, newspaper ads, billboards, signs, brochures, articles, tabloids, flyers, letters, radio or television presentations, **digital communication,** or other means of mass communication, used for the purpose of appealing, directly or indirectly, for votes or for financial or other support or opposition in any election campaign.

~~(37)~~ **(40)** "Political committee" means any person (except a candidate or an individual dealing with his or her own funds or property) having the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition.

~~(38)~~ **(41)** "Primary" for the purposes of RCW 42.17A.405 means the procedure for nominating a candidate to state or local office under chapter 29A.52 RCW or any other primary for an election that uses, in large measure, the procedures established in chapter 29A.52 RCW.

~~(39)~~ **(42)** "Public office" means any federal, state, judicial, county, city, town, school district, port district, special district, or other state political subdivision elective office.

~~(40)~~ **(43)** "Public record" has the definition in RCW 42.56.010.

~~(41)~~ **(44)** "Recall campaign" means the period of time beginning on the date of the filing of recall charges under RCW 29A.56.120 and ending thirty days after the recall election.

~~(42)~~ **(45) "Remedial violation" means any violation of this chapter that:**

(a) Involved expenditures totaling no more than the contribution limits set out under RCW 42.17A.405(2) per election, or one thousand dollars if there is no statutory limit;

(b) Occurred:

(i) More than thirty days before an election, where the commission entered into an agreement to resolve the matter; or

(ii) At any time where the violation did not constitute a material violation because it was inadvertent and minor or otherwise has been cured and, after consideration of all the circumstances, further proceedings would not serve the purposes of this chapter;

(c) Does not materially affect the public interest, beyond the harm to the policy of this chapter inherent in any violation; and

(d) Involved:

(i) A person who:

(A) Took corrective action within five business days after the commission first notified the person of noncompliance, or where the commission did not provide notice and filed a required report within twenty-one days after the report was due to be filed; and

(B) Substantially met the filing deadline for all other required reports within the immediately preceding twelve-month period; or

(ii) A candidate who:

(A) Lost the election in question; and

(B) Did not receive contributions over one hundred times the contribution limit in aggregate per election during the campaign in question.

(46)(a) "Sponsor" for purposes of an electioneering communications, independent expenditures, or political advertising means the person paying for the electioneering communication, independent expenditure, or political advertising. If a person acts as an agent for another or is reimbursed by another for the payment, the original source of the payment is the sponsor.

(b) "Sponsor," for purposes of a political committee, means any person, except an authorized committee, to whom any of the following applies:

(i) The committee receives eighty percent or more of its contributions either from the person or from the person's members, officers, employees, or shareholders;

(ii) The person collects contributions for the committee by use of payroll deductions or dues from its members, officers, or employees.

~~(43)~~ **(47)** "Sponsored committee" means a committee, other than an authorized committee, that has one or more sponsors.

~~(44)~~ **(48)** "State office" means state legislative office or the office of governor, lieutenant governor, secretary of state, attorney general, commissioner of public lands, insurance commissioner, superintendent of public instruction, state auditor, or state treasurer.

~~(45)~~ **(49)** "State official" means a person who holds a state office.

~~(46)~~ **(50)** "Surplus funds" mean, in the case of a political committee or candidate, the balance of contributions that remain in the possession or control of that committee or candidate subsequent to the election for which the contributions were received, and that are in excess of the amount necessary to pay remaining debts incurred by the committee or candidate with respect to that election. In the case of a continuing political committee, "surplus funds" mean those contributions remaining in the possession or control of the committee that are in excess of the amount necessary to pay all remaining debts when it makes its final report under RCW 42.17A.255.

~~(47)~~ **(51) "Technical correction" means a minor or ministerial error in a required report that does not materially impact the public interest and needs to be corrected for the report to be in full compliance with the requirements of this chapter.**

(52) "Treasurer" and "deputy treasurer" mean the individuals appointed by a candidate or political committee, pursuant to RCW 42.17A.210, to perform the duties specified in that section.

Sec. 3. RCW 42.17A.055 and 2013 c 166 s 2 are each amended to read as follows:

<< WA ST 42.17A.055 >>

(1) The commission shall make available to candidates, public officials, and political committees that are required to file reports under this chapter an electronic filing alternative for submitting financial affairs reports, contribution reports, and expenditure reports.

(2) The commission shall make available to lobbyists and lobbyists' employers required to file reports under RCW 42.17A.600, 42.17A.615, 42.17A.625, or 42.17A.630 an electronic filing alternative for submitting these reports.

(3) State agencies required to report under RCW 42.17A.635 must file all reports electronically.

(4) The commission shall make available to candidates, public officials, political committees, lobbyists, and lobbyists' employers an electronic copy of the appropriate reporting forms at no charge.

(5) If the electronic filing system provided by the commission is inoperable for any period of time, the commission must keep a record of the date and time of each instance and post outages on its web site. If a report is due on a day the electronic filing system is inoperable, it is not late if filed the first business day the system is back in operation. The commission must provide notice to all reporting entities when the system is back in operation.

(6) All persons required to file reports under this chapter shall, at the time of initial filing, provide the commission an email address that shall constitute the official address for purposes of all communications from the commission. The person required to file one or more reports must provide any new email address to the commission within ten days, if the address has changed from that listed on the most recent report. The executive director may waive the email requirement and allow use of a postal address, on the basis of hardship.

(7) The commission must publish a calendar of significant reporting dates on its web site.

Sec. 4. RCW 42.17A.110 and 2015 c 225 s 55 are each amended to read as follows:

<< WA ST 42.17A.110 >>

The commission may:

(1) Adopt, amend, and rescind suitable administrative rules to carry out the policies and purposes of this chapter, which rules shall be adopted under chapter 34.05 RCW. Any rule relating to campaign finance, political advertising, or related forms that would otherwise take effect after June 30th of a general election year shall take effect no earlier than the day following the general election in that year;

(2) Appoint an executive director and set, within the limits established by the office of financial management under RCW 43.03.028, the executive director's compensation. The executive director shall perform such duties and have such powers as the commission may prescribe and delegate to implement and enforce this chapter efficiently and effectively. The commission shall not delegate its authority to adopt, amend, or rescind rules nor may it delegate authority to determine ~~whether~~ **that** an actual violation of this chapter has occurred or to assess penalties for such violations;

(3) Prepare and publish reports and technical studies as in its judgment will tend to promote the purposes of this chapter, including reports and statistics concerning campaign financing, lobbying, financial interests of elected officials, and enforcement of this chapter;

(4) Conduct, as it deems appropriate, audits and field investigations;

(5) Make public the time and date of any formal hearing set to determine whether a violation has occurred, the question or questions to be considered, and the results thereof;

(6) Administer oaths and affirmations, issue subpoenas, and compel attendance, take evidence, and require the production of any records relevant to any investigation authorized under this chapter, or any other proceeding under this chapter;

(7) Adopt a code of fair campaign practices;

(8) Adopt rules relieving candidates or political committees of obligations to comply with the election campaign provisions of this chapter, if they have not received contributions nor made expenditures in connection with any election campaign of more than five thousand dollars; **and**

(9) ~~Adopt rules prescribing reasonable requirements for keeping accounts of, and reporting on a quarterly basis, costs incurred by state agencies, counties, cities, and other municipalities and political subdivisions in preparing, publishing, and distributing legislative information. For the purposes of this subsection, "legislative information" means books, pamphlets, reports, and other materials prepared, published, or distributed at substantial cost, a substantial purpose of which is to influence the passage or defeat of any legislation. The state auditor in his or her regular examination of each agency under chapter 43.09 RCW shall review the rules, accounts, and reports and make appropriate findings, comments, and recommendations concerning those agencies; and~~

~~(10)~~ Develop and provide to filers a system for certification of reports required under this chapter which are transmitted by facsimile or electronically to the commission. Implementation of the program is contingent on the availability of funds.

Sec. 5. RCW 42.17A.220 and 2010 c 205 s 3 and 2010 c 204 s 405 are each reenacted and amended to read as follows:

<< WA ST 42.17A.220 >>

(1) All monetary contributions received by a candidate or political committee shall be deposited by ~~the treasurer or deputy treasurer~~ **candidates, political committee members, paid staff, or treasurers** in a depository in an account established and designated for that purpose. Such deposits shall be made within five business days of receipt of the contribution. **For online or credit card contributions, the contribution is considered received at the time the transfer is made from the merchant account to a candidate or political committee account, except that a contribution made to a candidate who is a state official or legislator outside the restriction period established in RCW 42.17A.560, but transferred to the candidate's account within the restricted period, is considered received outside of the restriction period.**

(2) Political committees that support or oppose more than one candidate or ballot proposition, or exist for more than one purpose, may maintain multiple separate bank accounts within the same designated depository for such purpose only if:

(a) Each such account bears the same name;

(b) Each such account is followed by an appropriate designation that accurately identifies its separate purpose; and

(c) Transfers of funds that must be reported under RCW ~~42.17A.240(1)(c)~~ **42.17A.240(5)** are not made from more than one such account.

(3) Nothing in this section prohibits a candidate or political committee from investing funds on hand in a depository in bonds, certificates, or tax-exempt securities, or in savings accounts or other similar instruments in financial institutions, or in mutual funds other than the depository but only if:

(a) The commission ~~are [is]~~ **is** notified in writing of the initiation and the termination of the investment; and

(b) The principal of such investment, when terminated together with all interest, dividends, and income derived from the investment, is deposited in the depository in the account from which the investment was made and properly reported to the commission before any further disposition or expenditure.

(4) Accumulated unidentified contributions, other than those made by persons whose names must be maintained on a separate and private list by a political committee's treasurer pursuant to RCW ~~42.17A.240(1)(b)~~ **42.17A.240(2)**, in excess of one percent of the total accumulated contributions received in the current calendar year, or three hundred dollars, whichever is more, may not be deposited, used, or expended, but shall be returned to the donor if his or her identity can be ascertained. If the donor cannot be ascertained, the contribution shall escheat to the state and shall be paid to the state treasurer for deposit in the state general fund.

Sec. 6. RCW 42.17A.225 and 2011 c 60 s 22 are each amended to read as follows:

<< WA ST 42.17A.225 >>

(1) In addition to the provisions of this section, a continuing political committee shall file and report on the same conditions and at the same times as any other committee in accordance with the provisions of RCW 42.17A.205, 42.17A.210, and 42.17A.220.

(2) A continuing political committee shall file with the commission a report on the tenth day of each month detailing expenditures made and contributions received for the preceding calendar month. This report need only be filed if either the total contributions received or total expenditures made since the last such report exceed two hundred dollars. The report shall be on a form supplied by the commission and shall include the following information:

(a) The information required by RCW 42.17A.240;

(b) Each expenditure made to retire previously accumulated debts of the committee identified by recipient, amount, and date of payments;

(c) Other information the commission shall prescribe by rule.

(3) If a continuing political committee makes a contribution in support of or in opposition to a candidate or ballot proposition within sixty days before the date that the candidate or ballot proposition will be voted upon, the committee shall report pursuant to RCW 42.17A.235.

(4)**(a)** A continuing political committee shall file reports as required by this chapter until ~~it is dissolved~~ **the committee has ceased to function and intends to dissolve**, at which time**, when there is no outstanding debt or obligation and the committee is concluded in all respects,** a final report shall be filed. Upon submitting a final report, **the continuing political committee must file notice of intent to dissolve with the commission and the commission must post the notice on its web site.**

(b) The continuing political committee may dissolve sixty days after it files its notice to dissolve, only if:

(i) The continuing political committee does not make any expenditures other than those related to the dissolution process or engage in any political activity or any other activities that generate additional reporting requirements under this chapter after filing such notice;

(ii) No complaint or court action, pursuant to this chapter, is pending against the continuing political committee; and

(iii) All penalties assessed by the commission or court order are paid by the continuing political committee.

(c) The continuing political committee must continue to report regularly as required under this chapter until all the conditions under (b) of this subsection are resolved.

(d) The treasurer may not close the continuing political committee's bank account before the political committee has dissolved.

(e) Upon dissolution, the commission must issue an acknowledgment of dissolution, the duties of the treasurer shall cease**,** and there shall be no **further** obligation**s** ~~to make any further reports~~ **under this chapter**. **Dissolution does not absolve the candidate or board of the committee from responsibility for any future obligations resulting from the finding after dissolution of a violation committed prior to dissolution.**

(5) The treasurer shall maintain books of account, current within five business days, that accurately reflect all contributions and expenditures. During the ~~eight~~ **ten calendar** days immediately preceding the date of any election that the committee has received any contributions or made any expenditures, the books of account shall be kept current within one business day and shall be open for public inspection in the same manner as provided for candidates and other political committees in RCW 42.17A.235~~(4)~~ **(6)**.

(6) All reports filed pursuant to this section shall be certified as correct by the treasurer.

(7) The treasurer shall preserve books of account, bills, receipts, and all other financial records of the campaign or political committee for not less than five calendar years following the year during which the transaction occurred.

Sec. 7. RCW 42.17A.235 and 2015 c 54 s 1 are each amended to read as follows:

<< WA ST 42.17A.235 >>

(1) In addition to the information required under RCW 42.17A.205 and 42.17A.210, ~~on the day the treasurer is designated,~~ each candidate or political committee must file with the commission a report of all contributions received and expenditures made ~~prior to that date, if any~~ **as a political committee on the next reporting date pursuant to the timeline established in this section**.

(2) Each treasurer shall file with the commission a report**, for each election in which a candidate or political committee is participating,** containing the information required by RCW 42.17A.240 at the following intervals:

(a) On the twenty-first day and the seventh day immediately preceding the date on which the election is held; **and**

(b) On the tenth day of the first **full** month after the election~~; and~~ **.**

~~(c)~~ **(3) Each treasurer shall file with the commission a report o**n the tenth day of each month ~~in~~ **during** which ~~no other reports are required to be filed under this section~~ **the candidate or political committee is not participating in an election campaign,** only if the committee has received a contribution or made an expenditure in the preceding calendar month and either the total contributions received or total expenditures made since the last such report exceed two hundred dollars.

(4) The report filed twenty-one days before the election shall report all contributions received and expenditures made as of the end of one business day before the date of the report. The report filed seven days before the election shall report all contributions received and expenditures made as of the end of one business day before the date of the report. Reports filed on the tenth day of the month shall report all contributions received and expenditures made from the closing date of the last report filed through the last day of the month preceding the date of the current report.

~~(3)~~ **(5)** For the period beginning the first day of the fourth month preceding the date of the special election, or for the period beginning the first day of the fifth month before the date of the general election, and ending on the date of that special or general election, each Monday the treasurer shall file with the commission a report of each bank deposit made during the previous seven calendar days. The report shall contain the name of each person contributing the funds and the amount contributed by each person. However, persons who contribute no more than twenty-five dollars in the aggregate are not required to be identified in the report. A copy of the report shall be retained by the treasurer for his or her records. In the event of deposits made by ~~a deputy treasurer~~ **candidates, political committee members, or paid staff other than the treasurer**, the copy shall be ~~forwarded~~ **immediately provided** to the treasurer for his or her records. Each report shall be certified as correct by the treasurer ~~or deputy treasurer making the deposit~~ .

~~(4)~~ **(6)**(a) The treasurer or candidate shall maintain books of account accurately reflecting all contributions and expenditures on a current basis within five business days of receipt or expenditure. During the ~~eight~~ **ten calendar** days immediately preceding the date of the election the books of account shall be kept current within one business day. As specified in the committee's statement of organization filed under RCW 42.17A.205, the books of account must be open for public inspection by appointment at ~~the designated~~ **a** place **agreed upon by both the treasurer and the requestor,** for inspections between ~~8:00~~ **9:00** a.m. and ~~8:00~~ **5:00** p.m. on any day from the ~~eighth~~ **tenth calendar** day immediately before the election through the day immediately before the election, other than Saturday, Sunday, or a legal holiday. It is a violation of this chapter for a candidate or political committee to refuse to allow and keep an appointment for an inspection to be conducted during these authorized times and days. The appointment must be allowed at an authorized time and day for such inspections that is within ~~twenty-four~~ **forty-eight** hours of the time and day that is requested for the inspection. **The treasurer may provide digital access or copies of the books of account in lieu of scheduling an appointment at a designated place for inspection.**

(b) At the time of making the appointment, a person wishing to inspect the books of account must provide the treasurer the name and telephone number of the person wishing to inspect the books of account. The person inspecting the books of account must show photo identification before the inspection begins.

(c) A treasurer may refuse to show the books of account to any person who does not make an appointment or provide the required identification. **The commission may issue limited rules to modify the requirements set forth in this section in consideration of other technology and best practices.**

~~(5)~~ **(7)** Copies of all reports filed pursuant to this section shall be readily available for public inspection by appointment, pursuant to subsection ~~(4)~~ **(6)** of this section~~, at the principal headquarters or, if there is no headquarters, at the address of the treasurer or such other place as may be authorized by the commission~~ .

~~(6)~~ **(8)** The treasurer or candidate shall preserve books of account, bills, receipts, and all other financial records of the campaign or political committee for not less than ~~five~~ **two** calendar years following the year during which the transaction occurred **or for any longer period as otherwise required by law**.

~~(7)~~ **(9)** All reports filed pursuant to subsection (1) or (2) of this section shall be certified as correct by the candidate and the treasurer.

~~(8)~~ **(10) It is not a violation of this section to submit an amended report within twenty-one days of filing an underlying report if:**

(a) The report is accurately amended;

(b) The corrected report is filed more than thirty days before an election;

(c) The total aggregate dollar amount of the adjustment for the individual report is within three times the contribution limit per election or two hundred dollars, whichever is greater; and

(d) The committee reported all information that was available to it at the time of filing, or made a good-faith effort to do so, or if a refund of a contribution or expenditure is being reported.

(11)(a) When there is no outstanding debt or obligation, the campaign fund is closed, ~~and~~ the campaign is concluded in all respects ~~or in the case of a political committee~~ , **and** the committee has ceased to function and ~~has dissolved~~ **intends to dissolve**, the treasurer shall file a final report. Upon submitting a final report, **the committee must file notice of intent to dissolve with the commission and the commission must post the notice on its web site.**

(b) Any committee may dissolve sixty days after it files its notice to dissolve, only if:

(i) The political committee does not make any expenditures other than those related to the dissolution process or engage in any political activity or any other activities that generate additional reporting requirements under this chapter after filing such notice;

(ii) No complaint or court action under this chapter is pending against the political committee; and

(iii) All penalties assessed by the commission or court order are paid by the political committee.

(c) The political committee must continue to report regularly as required under this chapter until all the conditions under (b) of this subsection are resolved.

(d) The treasurer may not close the political committee's bank account before the political committee has dissolved.

(e) Upon dissolution, the commission must issue an acknowledgment of dissolution, the duties of the treasurer shall cease**,** and there ~~is~~ **shall be** no **further** obligation**s** ~~to make any further reports~~ **under this chapter**. **Dissolution does not absolve the candidate or board of the committee from responsibility for any future obligations resulting from the finding after dissolution of a violation committed prior to dissolution.**

Sec. 8. RCW 42.17A.240 and 2010 c 204 s 409 are each amended to read as follows:

<< WA ST 42.17A.240 >>

Each report required under RCW 42.17A.235 (1) and (2) must be certified as correct by the treasurer and the candidate and shall disclose the following:

(1) The funds on hand at the beginning of the period;

(2) The name and address of each person who has made one or more contributions during the period, together with the money value and date of each contribution and the aggregate value of all contributions received from each person during the campaign, or in the case of a continuing political committee, the current calendar year, with the following exceptions:

(a) ~~Pledges in the aggregate of less than one hundred dollars from any one person need not be reported;~~

~~(b)~~ Income that results from a fund-raising activity conducted in accordance with RCW 42.17A.230 may be reported as one lump sum, with the exception of that portion received from persons whose names and addresses are required to be included in the report required by RCW 42.17A.230;

~~(c)~~ **(b)** Contributions of no more than twenty-five dollars in the aggregate from any one person during the election campaign may be reported as one lump sum if the treasurer maintains a separate and private list of the name, address, and amount of each such contributor; and

~~(d)~~ **(c)** The money value of contributions of postage shall be the face value of the postage;

(3) Each loan, promissory note, or security instrument to be used by or for the benefit of the candidate or political committee made by any person, including the names and addresses of the lender and each person liable directly, indirectly or contingently and the date and amount of each such loan, promissory note, or security instrument;

(4) All other contributions not otherwise listed or exempted;

(5) The name and address of each candidate or political committee to which any transfer of funds was made, including the amounts and dates of the transfers;

(6) The name and address of each person to whom an expenditure was made in the aggregate amount of more than fifty dollars during the period covered by this report, the amount, date, and purpose of each expenditure, and the total sum of all expenditures;

(7) The name and address of each person directly compensated for soliciting or procuring signatures on an initiative or referendum petition, the amount of the compensation to each person, and the total expenditures made for this purpose. Such expenditures shall be reported under this subsection in addition to what is required to be reported under subsection (6) of this section;

(8)**(a)** The name and address of any person and the amount owed for any debt~~, obligation, note, unpaid loan, or other liability in the amount~~ **with a value** of more than ~~two~~ **seven** hundred fifty dollars ~~or in the amount of more than fifty dollars that has been outstanding for over thirty days~~ **that has not been paid for any invoices submitted, goods received, or services performed, within five business days during the period within thirty days before an election, or within ten business days during any other period.**

(b) For purposes of this subsection, debt does not include:

(i) Regularly recurring expenditures of the same amount that have already been reported at least once and that are not late or outstanding; or

(ii) Any obligations already reported to pay for goods and services made by a third party on behalf of a candidate or political committee after the original payment or debt to that party has been reported;

(9) The surplus or deficit of contributions over expenditures;

(10) The disposition made in accordance with RCW 42.17A.430 of any surplus funds; and

(11) Any other information required by the commission by rule in conformance with the policies and purposes of this chapter.

~~**Sec. 9.** RCW 42.17A.255 and 2011 c 60 s 24 are each amended to read as follows:~~

<< WA ST 42.17A.255 >>

~~(1) For the purposes of this section the term "independent expenditure" means any expenditure that is made in support of or in opposition to any candidate or ballot proposition and is not otherwise required to be reported pursuant to RCW 42.17A.220, 42.17A.235, and 42.17A.240. "Independent expenditure" does not include: An internal political communication primarily limited to the contributors to a political party organization or political action committee, or the officers, management staff, and stockholders of a corporation or similar enterprise, or the members of a labor organization or other membership organization; or the rendering of personal services of the sort commonly performed by volunteer campaign workers, or incidental expenses personally incurred by volunteer campaign workers not in excess of fifty dollars personally paid for by the worker. "Volunteer services," for the purposes of this section, means services or labor for which the individual is not compensated by any person.~~

~~(2) Within five days after the date of making an independent expenditure that by itself or when added to all other such independent expenditures made during the same election campaign by the same person equals one hundred dollars or more~~ **the contribution limit from an individual per election found in RCW 42.17A.405 for that office**~~, or within five days after the date of making an independent expenditure for which no reasonable estimate of monetary value is practicable, whichever occurs first, the person who made the independent expenditure shall file with the commission an initial report of all independent expenditures made during the campaign prior to and including such date.~~ **For purposes of this section, in addition to the meaning of "independent expenditure" under RCW 42.17A.005, any expenditure in excess of one-half the contribution limit per election for a local measure or in excess of the contribution limit per election for a statewide measure in support of or opposition to a ballot measure, must be reported as an in-kind contribution to a political committee associated with support or opposition to that ballot measure or, in the event no such committee exists, reported as an independent expenditure.**

~~(3)~~ **(2)** ~~At the following intervals each person who is required to file an initial report pursuant to subsection (2)~~ **(1)** ~~of this section shall file with the commission a further report of the independent expenditures made since the date of the last report:~~

~~(a) On the twenty-first day and the seventh day preceding the date on which the election is held; and~~

~~(b) On the tenth day of the first month after the election; and~~

~~(c) On the tenth day of each month in which no other reports are required to be filed pursuant to this section. However, the further reports required by this subsection (3)~~ **(2)** ~~shall only be filed if the reporting person has made an independent expenditure since the date of the last previous report filed.~~

~~The report filed pursuant to paragraph (a) of this subsection (3) shall be the final report, and upon submitting such final report the duties of the reporting person shall cease, and~~ **If the reporting person has not made any independent expenditures since the date of the last report on file,** ~~there shall be no obligation to make any further reports.~~

~~(4)~~ **(3)** ~~All reports filed pursuant to this section shall be certified as correct by the reporting person.~~

~~(5)~~ **(4)** ~~Each report required by subsections (2)~~ **(1)** ~~and (3)~~ **(2)** ~~of this section shall disclose for the period beginning at the end of the period for the last previous report filed or, in the case of an initial report, beginning at the time of the first independent expenditure, and ending not more than one business day before the date the report is due:~~

~~(a) The name and address of the person filing the report;~~

~~(b) The name and address of each person to whom an independent expenditure was made in the aggregate amount of more than fifty dollars, and the amount, date, and purpose of each such expenditure. If no reasonable estimate of the monetary value of a particular independent expenditure is practicable, it is sufficient to report instead a precise description of services, property, or rights furnished through the expenditure and where appropriate to attach a copy of the item produced or distributed by the expenditure;~~

~~(c) The total sum of all independent expenditures made during the campaign to date; and~~

~~(d) Such other information as shall be required by the commission by rule in conformance with the policies and purposes of this chapter.~~

<Sec. 9 was vetoed.>

Sec. 10. ~~RCW 42.17A.265 and 2010 c 204 s 414 are each amended to read as follows:~~

<< WA ST 42.17A.265 >>

~~(1) Treasurers shall prepare and deliver to the commission a special report when a contribution or aggregate of contributions totals one thousand dollars or more, is~~ **exceeds three times the contribution limit per election** ~~from a single person or entity, and is received during a special reporting period.~~

~~(2) A political committee~~ **treasurer** ~~shall prepare and deliver to the commission a special report when it~~ **the political committee** ~~makes a contribution or an aggregate of contributions to a single entity that totals one thousand dollars or more~~ **exceeds three times the contribution limit from an individual per election** ~~during a special reporting period.~~

~~(3) An aggregate of contributions includes only those contributions made to or received from a single entity during any one special reporting period. Any subsequent contribution of any size made to or received from the same person or entity during the special reporting period must also be reported.~~

~~(4) Special reporting periods, for purposes of this section, include:~~

~~(a) The period beginning on the day after the last report required by RCW 42.17A.235 and 42.17A.240 to be filed before a primary and concluding on the end of the day before that primary;~~

~~(b) The period twenty-one days preceding a general election; and~~

~~(c) An aggregate of contributions includes only those contributions received from a single entity during any one special reporting period or made by the contributing political committee to a single entity during any one special reporting period.~~

~~(5) If a campaign treasurer files a special report under this section for one or more contributions received from a single entity during a special reporting period, the treasurer shall also file a special report under this section for each subsequent contribution of any size which is received from that entity during the special reporting period. If a political committee files a special report under this section for a contribution or contributions made to a single entity during a special reporting period, the political committee shall also file a special report for each subsequent contribution of any size which is made to that entity during the special reporting period.~~

~~(6) Special reports required by this section shall be delivered electronically or in written form, including but not limited to mailgram, telegram, or nightletter~~ . ~~The special report may be transmitted orally by telephone to the commission if the written form of the report is postmarked and mailed to the commission or the electronic filing is transferred to the commission within the delivery periods established in (a) and (b) of this subsection.~~

~~(a) The special report required of a contribution recipient under subsection (1) of this section shall be delivered to the commission within forty-eight hours of the time, or on the first working day after: The~~ **qualifying** ~~contribution of one thousand dollars or more~~ **amount** ~~is received by the candidate or treasurer; the aggregate received by the candidate or treasurer first equals one thousand dollars~~ **the qualifying amount** ~~or more; or any subsequent contribution from the same source is received by the candidate or treasurer.~~

~~(b) The special report required of a contributor under subsection (2) of this section or RCW 42.17A.625 shall be delivered to the commission, and the candidate or political committee to whom the contribution or contributions are made, within twenty-four hours of the time, or on the first working day after: The contribution is made; the aggregate of contributions made first equals one thousand dollars~~ **the qualifying amount** ~~or more; or any subsequent contribution to the same person or entity is made.~~

~~(7) The special report shall include:~~

~~(a) The amount of the contribution or contributions;~~

~~(b) The date or dates of receipt;~~

~~(c) The name and address of the donor;~~

~~(d) The name and address of the recipient; and~~

~~(e) Any other information the commission may by rule require.~~

~~(8) Contributions reported under this section shall also be reported as required by other provisions of this chapter.~~

~~(9) The commission shall prepare daily a summary of~~ **make** ~~the special reports made under this section and RCW 42.17A.625~~ **available on its web site within one business day**~~.~~

~~(10) Contributions governed by this section include, but are not limited to, contributions made or received indirectly through a third party or entity whether the contributions are or are not reported to the commission as earmarked contributions under RCW 42.17A.270.~~

<Sec. 10 was vetoed.>

Sec. 11. RCW 42.17A.450 and 1993 c 2 s 5 are each amended to read as follows:

<< WA ST 42.17A.450 >>

(1) Contributions by ~~a husband and wife~~ **spouses** are considered separate contributions.

(2) Contributions by unemancipated children under eighteen years of age are considered contributions by their parents and are attributed proportionately to each parent. Fifty percent of the contributions are attributed to each parent or, in the case of a single custodial parent, the total amount is attributed to the parent.

Sec. 12. RCW 42.17A.750 and 2013 c 166 s 1 are each amended to read as follows:

<< WA ST 42.17A.750 >>

(1) In addition to the penalties in subsection (2) of this section, and any other remedies provided by law, one or more of the following civil remedies and sanctions may be imposed by court order in addition to any other remedies provided by law:

(a) If the court finds that the violation of any provision of this chapter by any candidate or political committee probably affected the outcome of any election, the result of that election may be held void and a special election held within sixty days of the finding. Any action to void an election shall be commenced within one year of the date of the election in question. It is intended that this remedy be imposed freely in all appropriate cases to protect the right of the electorate to an informed and knowledgeable vote.

(b) If any lobbyist or sponsor of any grass roots lobbying campaign violates any of the provisions of this chapter, his or her registration may be revoked or suspended and he or she may be enjoined from receiving compensation or making expenditures for lobbying. The imposition of a sanction shall not excuse the lobbyist from filing statements and reports required by this chapter.

(c) A person who violates any of the provisions of this chapter may be subject to a civil penalty of not more than ten thousand dollars for each violation. However, a person or entity who violates RCW 42.17A.405 may be subject to a civil penalty of ten thousand dollars or three times the amount of the contribution illegally made or accepted, whichever is greater.

(d) **When assessing a civil penalty, the court may consider the nature of the violation and any relevant circumstances, including the following factors:**

(i) The respondent's compliance history, including whether the noncompliance was isolated or limited in nature, indicative of systematic or ongoing problems, or part of a pattern of violations by the respondent, resulted from a knowing or intentional effort to conceal, deceive or mislead, or from collusive behavior, or in the case of a political committee or other entity, part of a pattern of violations by the respondent's officers, staff, principal decision makers, consultants, or sponsoring organization;

(ii) The impact on the public, including whether the noncompliance deprived the public of timely or accurate information during a time-sensitive period or otherwise had a significant or material impact on the public;

(iii) Experience with campaign finance law and procedures or the financing, staffing, or size of the respondent's campaign or organization;

(iv) The amount of financial activity by the respondent during the statement period or election cycle;

(v) Whether the late or unreported activity was within three times the contribution limit per election, including in proportion to the total amount of expenditures by the respondent in the campaign or statement period;

(vi) Whether the respondent or any person benefited politically or economically from the noncompliance;

(vii) Whether there was a personal emergency or illness of the respondent or member of his or her immediate family;

(viii) Whether other emergencies such as fire, flood, or utility failure prevented filing;

(ix) Whether there was commission staff or equipment error, including technical problems at the commission that prevented or delayed electronic filing;

(x) The respondent's demonstrated good-faith uncertainty concerning commission staff guidance or instructions;

(xi) Whether the respondent is a first-time filer;

(xii) Good faith efforts to comply, including consultation with commission staff prior to initiation of enforcement action and cooperation with commission staff during enforcement action and a demonstrated wish to acknowledge and take responsibility for the violation;

(xiii) Penalties imposed in factually similar cases; and

(xiv) Other factors relevant to the particular case.

(e) A person who fails to file a properly completed statement or report within the time required by this chapter may be subject to a civil penalty of ten dollars per day for each day each delinquency continues.

~~(e)~~ **(f)** Each state agency director who knowingly fails to file statements required by RCW 42.17A.635 shall be subject to personal liability in the form of a civil penalty in the amount of one hundred dollars per statement. These penalties are in addition to any other civil remedies or sanctions imposed on the agency.

~~(f)~~ **(g)** A person who fails to report a contribution or expenditure as required by this chapter may be subject to a civil penalty equivalent to the amount not reported as required.

~~(g)~~ **(h)** Any state agency official, officer, or employee who is responsible for or knowingly directs or expends public funds in violation of RCW 42.17A.635 (2) or (3) may be subject to personal liability in the form of a civil penalty in an amount that is at least equivalent to the amount of public funds expended in the violation.

~~(h)~~ **(i)** The court may enjoin any person to prevent the doing of any act herein prohibited, or to compel the performance of any act required herein.

(2) The commission may refer the following violations for criminal prosecution:

(a) A person who, with actual malice, violates a provision of this chapter is guilty of a misdemeanor under chapter 9.92 RCW;

(b) A person who, within a five-year period, with actual malice, violates three or more provisions of this chapter is guilty of a gross misdemeanor under chapter 9.92 RCW; and

(c) A person who, with actual malice, procures or offers any false or forged document to be filed, registered, or recorded with the commission under this chapter is guilty of a class C felony under chapter 9.94A RCW.

Sec. 13. RCW 42.17A.755 and 2011 c 145 s 7 are each amended to read as follows:

<< WA ST 42.17A.755 >>

(1) The commission may ~~(a) determine whether an actual violation of this chapter has occurred; and (b) issue and enforce an appropriate order following such a determination.~~ **initiate or respond to a complaint, request a technical correction, or otherwise resolve matters of compliance with this chapter, in accordance with this section. If a complaint is filed with or initiated by the commission, the commission must:**

(a) Dismiss the complaint or otherwise resolve the matter in accordance with subsection (2) of this section, as appropriate under the circumstances after conducting a preliminary review;

(b) Initiate an investigation to determine whether an actual violation has occurred, conduct hearings, and issue and enforce an appropriate order, in accordance with chapter 34.05 RCW and subsection (3) of this section; or

(c) Refer the matter to the attorney general, in accordance with subsection (4) of this section.

(2)~~The commission~~ **(a) For complaints of remedial violations or requests for technical corrections, the commission may, by rule, delegate authority to its executive director to resolve these matters in accordance with subsection (1)(a) of this section, provided the executive director consistently applies such authority.**

(b) The commission shall, by rule, develop additional processes by which a respondent may agree by stipulation to any allegations and pay a penalty subject to a schedule of violations and penalties, unless waived by the commission as provided for in this section. Any stipulation must be referred to the commission for review. If approved or modified by the commission, agreed to by the parties, and the respondent complies with all requirements set forth in the stipulation, the matter is then considered resolved and no further action or review is allowed.

(3) If the commission initiates an investigation, an initial hearing must be held within ninety days of the complaint being filed. Following an investigation, in cases where it chooses to determine whether an actual violation has occurred, **the commission** shall hold a hearing pursuant to the administrative procedure act, chapter 34.05 RCW~~, to make a determination~~ . Any order that the commission issues under this section shall be pursuant to such a hearing.

~~(3) In lieu of holding a hearing or issuing an order under this section,~~ **(a) The person against whom an order is directed under this section shall be designated as the respondent. The order may require the respondent to cease and desist from the activity that constitutes a violation and in addition, or alternatively, may impose one or more of the remedies provided in RCW 42.17A.750(1) (b) through (h), or other requirements as the commission determines appropriate to effectuate the purposes of this chapter.**

(b) The commission may assess a penalty in an amount not to exceed ten thousand dollars per violation, unless the parties stipulate otherwise. Any order that the commission issues under this section that imposes a financial penalty must be made pursuant to a hearing, held in accordance with the administrative procedure act, chapter 34.05 RCW.

(c) The commission has the authority to waive a penalty for a first-time actual violation. A second actual violation of the same requirement by the same person, regardless if the person or individual committed the actual violation for a different political committee, shall result in a penalty. Successive actual violations of the same requirement shall result in successively increased penalties. The commission may suspend any portion of an assessed penalty contingent on future compliance with this chapter. The commission must create a schedule to enhance penalties based on repeat actual violations by the person.

(d) Any order issued by the commission is subject to judicial review under the administrative procedure act, chapter 34.05 RCW. If the commission's order is not satisfied and no petition for review is filed within thirty days, the commission may petition a court of competent jurisdiction of any county in which a petition for review could be filed under that jurisdiction, for an order of enforcement. Proceedings in connection with the commission's petition shall be in accordance with RCW 42.17A.760.

(4) In lieu of holding a hearing or issuing an order under this section, the commission may refer the matter to the attorney general ~~or other enforcement agency as provided in RCW 42.17A.105~~ **consistent with this section, when the commission believes:**

(a) Additional authority is needed to ensure full compliance with this chapter;

(b) An actual violation potentially warrants a penalty greater than the commission's penalty authority; or

(c) The maximum penalty the commission is able to levy is not enough to address the severity of the violation.

~~(4) The person against whom an order is directed under this section shall be designated as the respondent. The order may require the respondent to cease and desist from the activity that constitutes a violation and in addition, or alternatively, may impose one or more of the remedies provided in RCW 42.17A.750(1) (b) through (e). The commission may assess a penalty in an amount not to exceed ten thousand dollars.~~

~~(5) The commission has the authority to waive a fine for a first-time violation. A second violation of the same rule by the same person or individual, regardless if the person or individual committed the violation for a different political committee, shall result in a fine. Succeeding violations of the same rule shall result in successively increased fines.~~

~~(6) An order issued by the commission under this section shall be subject to judicial review under the administrative procedure act, chapter 34.05 RCW. If the commission's order is not satisfied and no petition for review is filed within thirty days, the commission may petition a court of competent jurisdiction of any county in which a petition for review could be filed under that section, for an order of enforcement. Proceedings in connection with the commission's petition shall be in accordance with RCW 42.17A.760.~~

Sec. 14. RCW 42.17A.765 and 2010 c 204 s 1004 are each amended to read as follows:

<< WA ST 42.17A.765 >>

(1)**(a) Only after a matter is referred by the commission, under RCW 42.17A.755, t**he attorney general ~~and the prosecuting authorities of political subdivisions of this state~~ may bring civil actions in the name of the state for any appropriate civil remedy, including but not limited to the special remedies provided in RCW 42.17A.750. **The attorney general must provide notice**

of his or her decision whether to commence an action on the attorney general's office web site within forty-five days of receiving the referral, which constitutes state action for purposes of this chapter.

(b) The attorney general should use the enforcement powers in this section in a consistent manner that provides guidance in complying with the provisions of this chapter to candidates, political committees, or other individuals subject to the regulations of this chapter.

(2) The attorney general ~~and the prosecuting authorities of political subdivisions of this state~~ may investigate or cause to be investigated the activities of any person who there is reason to believe is or has been acting in violation of this chapter, and may require any such person or any other person reasonably believed to have information concerning the activities of such person to appear at a time and place designated in the county in which such person resides or is found, to give such information under oath and to produce all accounts, bills, receipts, books, paper and documents which may be relevant or material to any investigation authorized under this chapter.

(3) When the attorney general ~~or the prosecuting authority of any political subdivision of this state~~ requires the attendance of any person to obtain such information or produce the accounts, bills, receipts, books, papers, and documents that may be relevant or material to any investigation authorized under this chapter, he or she shall issue an order setting forth the time when and the place where attendance is required and shall cause the same to be delivered to or sent by registered mail to the person at least fourteen days before the date fixed for attendance. The order shall have the same force and effect as a subpoena, shall be effective statewide, and, upon application of the attorney general ~~or the prosecuting authority~~ , obedience to the order may be enforced by any superior court judge in the county where the person receiving it resides or is found, in the same manner as though the order were a subpoena. The court, after hearing, for good cause, and upon application of any person aggrieved by the order, shall have the right to alter, amend, revise, suspend, or postpone all or any part of its provisions. In any case where the order is not enforced by the court according to its terms, the reasons for the court's actions shall be clearly stated in writing, and the action shall be subject to review by the appellate courts by certiorari or other appropriate proceeding.

~~(4) A person who has notified the attorney general and the prosecuting attorney in the county in which the violation occurred in writing that there is reason to believe that some provision of this chapter is being or has been violated may himself or herself bring in the name of the state any of the actions (hereinafter referred to as a citizen's action) authorized under this chapter.~~

~~(a) This citizen action may be brought only if:~~

~~(i) The attorney general and the prosecuting attorney have failed to commence an action hereunder within forty-five days after the notice;~~

~~(ii) The person has thereafter further notified the attorney general and prosecuting attorney that the person will commence a citizen's action within ten days upon their failure to do so;~~

~~(iii) The attorney general and the prosecuting attorney have in fact failed to bring such action within ten days of receipt of said second notice; and~~

~~(iv) The citizen's action is filed within two years after the date when the alleged violation occurred.~~

~~(b) If the person who brings the citizen's action prevails, the judgment awarded shall escheat to the state, but he or she shall be entitled to be reimbursed by the state of Washington for costs and attorneys' fees he or she has incurred. In the case of a citizen's action that is dismissed and that the court also finds was brought without reasonable cause, the court may order the person commencing the action to pay all costs of trial and reasonable attorneys' fees incurred by the defendant.~~

~~(5) In any action brought under this section, the court may award to the state all costs of investigation and trial, including reasonable attorneys' fees to be fixed by the court. If the violation is found to have been intentional, the amount of the judgment, which shall for this purpose include the costs, may be trebled as punitive damages. If damages or trebled damages are awarded in such an action brought against a lobbyist, the judgment may be awarded against the lobbyist, and the lobbyist's employer or employers joined as defendants, jointly, severally, or both. If the defendant prevails, he or she shall be awarded all costs of trial, and may be awarded reasonable attorneys' fees to be fixed by the court to be paid by the state of Washington.~~

Sec. 15. RCW 42.17A.770 and 2011 c 60 s 26 are each amended to read as follows:

<< WA ST 42.17A.770 >>

Except as provided in ~~RCW 42.17A.765(4)(a)(iv)~~ **section 16(4) of this act**, any action brought under the provisions of this chapter must be commenced within five years after the date when the violation occurred.

NEW SECTION. **Sec. 16.** A new section is added to chapter 42.17A RCW to read as follows:

<< WA ST 42.17A >>

(1) A person who has reason to believe that a provision of this chapter is being or has been violated may bring a citizen's action in the name of the state, in accordance with the procedures of this section.

(2) A citizen's action may be brought and prosecuted only if the person first has filed a complaint with the commission and:

(a) The commission has not taken action authorized under RCW 42.17A.755(1) within ninety days of the complaint being filed with the commission; and

(b) For matters referred to the attorney general within ninety days of the commission receiving the complaint, the attorney general has not commenced an action within forty-five days of receiving referral from the commission.

(3) To initiate the citizen's action, after meeting the requirements under subsection (2) of this section, a person must notify the attorney general and the commission that he or she will commence a citizen's action within ten days if the commission does not take action or, if applicable, the attorney general does not commence an action.

(4) The citizen's action must be commenced within two years after the date when the alleged violation occurred and may not be commenced against a committee before the end of such period if the committee has received an acknowledgment of dissolution.

(5) If the person who brings the citizen's action prevails, the judgment awarded shall escheat to the state, but he or she shall be entitled to be reimbursed by the state for reasonable costs and reasonable attorneys' fees the person incurred. In the case of a citizen's action that is dismissed and that the court also finds was brought without reasonable cause, the court may order the person commencing the action to pay all trial costs and reasonable attorneys' fees incurred by the defendant.

NEW SECTION. **Sec. 17.** A new section is added to chapter 42.17A RCW to read as follows:

<< WA ST 42.17A >>

In any action brought under this chapter, the court may award to the commission all reasonable costs of investigation and trial, including reasonable attorneys' fees to be fixed by the court. If the violation is found to have been intentional, the amount of the judgment, which shall for this purpose include the costs, may be trebled as punitive damages. If damages or trebled damages are awarded in such an action brought against a lobbyist, the judgment may be awarded against the lobbyist, and the lobbyist's

employer or employers joined as defendants, jointly, severally, or both. If the defendant prevails, he or she shall be awarded all costs of trial and may be awarded reasonable attorneys' fees to be fixed by the court and paid by the state of Washington.

NEW SECTION. **Sec. 18.** A new section is added to chapter 42.17A RCW to read as follows:

<< WA ST 42.17A >>

The public disclosure transparency account is created in the state treasury. All receipts from penalties collected pursuant to enforcement actions or settlements under this chapter, including any fees or costs, must be deposited into the account. Moneys in the account may be spent only after appropriation. Moneys in the account may be used only for the implementation of this act and duties under this chapter, and may not be used to supplant general fund appropriations to the commission.

NEW SECTION. **Sec. 19.** (1) The sum of one hundred twenty-five thousand dollars is appropriated for the fiscal year ending June 30, 2018, from the general fund—state account to the public disclosure commission solely for the purposes of administering chapter 42.17A RCW.

(2) The sum of one hundred twenty-five thousand dollars is appropriated for the fiscal year ending June 30, 2019, from the general fund—state account to the public disclosure commission solely for the purposes of administering chapter 42.17A RCW.

NEW SECTION. **Sec. 20.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Approved March 28, 2018, with the exception of Sections 9 and 10, which are vetoed.
Effective June 7, 2018.

End of Document

FREEDOM FOUNDATION

December 02, 2020 - 4:05 PM

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Appellate Court Case Title:	Freedom Foundation, Appellant v. Service Employees International Union 775, Respondent
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